SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 915

BARBARA JUNE MUNCY AND CHARLES MUNCY,
Petitioners,

vs.

GENERAL MOTORS CORPORATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Application of Petitioners

FRANKLIN JONES
P. O. Drawer 1249
Marshall, Texas
WILLIAM HURWITZ
1021 First National Bank Building
Longview, Texas
Attorneys for Barbara June Muncy, Et Vir, Petitioners.

E. L. MERDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, HArrison 1-3080

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CITATIONS TO OPINIONS BELOW

Pursuant to findings of a jury, the District Court entered judgment in favor of the Petitioners on April 10, 1964, without written opinion (Vol. II, R. 509). The opinion of the Circuit Court of Appeals, printed in Appendix A hereto, *infra,* page A1, is at present unreported. The opinion of the Texas Court of Civil Appeals of Dallas on a venue question alone, printed in Appendix B hereto, *infra,* page A9, is reported in 357 S. W. 2d 430.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 6, 1966 (R. Vol. III, 1108, Appendix C. page A24, *infra*). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

1. Whether the Court of Appeals can re-examine the facts found by a jury so as to deny a trial by jury under the Seventh Amendment by (a) rejecting the testimony of Respondent's Co-defendant because it was given without objection in answer to a leading question, (b) denying a jury the privilege of choosing between logical inferences and contradictory testimony, and (c) substituting its own findings for those of a jury.

2. Whether the Court of Appeals can deprive the jury of the right of considering testimony elicited without objection by a leading question to Respondent's Co-defendant, despite F. R. C. P. 43(b) allowing the same, and thereby rendered judgment contrary to a jury verdict for reasons not urged in the Trial Court or Court of Appeals.

3. Whether the Court of Appeals can preclude a jury trial on factual issues by holding itself bound by enunciated principles of a Texas intermediate appellate court in an interlocutory venue proceeding, which principles turned on evidence not shown to be substantially the same and which, in fact, differed greatly from that adduced at the trial on the merits.

STATUTES INVOLVED

1. U. S. Constitution, Amendment VII.

2. Federal Rules of Civil Procedure, 38(a); 43(a), (b), printed in Appendix D, pages A25, *infra*.

STATEMENT

On July 27, 1962; the Petitioners filed a Complaint seeking damages by reason of the severance of the left leg of Barbara June Muncy and accompanying serious injuries caused by her being driven through a plate glass store front by a runaway automobile manufactured by the Respondent (Vol. I, R. 1). The jurisdiction of the District Court was invoked because of a complete diversity of citizenship between the plaintiffs and all defendants. In response to a charge that was unassailed on appeal, the jury to which the case was tried returned a verdict against General Motors Corporation, C. L. Lane and wife, owners of the automobile, and Mrs. Nellie Hudnall, who was in the vehicle when it crashed into Mrs. Muncy (Vol. II, R. 506). Only the Respondent, General Motors Corporation, appealed from the judgment for $225,000.00 (Vol. II, R. 507).

A panel of the United States Court of Appeals for the Fifth Circuit entered a judgment reversing that of the District Court (Vol. III, R. 1108, Appendix A and C, pages A1, A24, *infra*) for the reason that a verdict should have been directed for General Motors Corporation.

The runaway Chevrolet was bought new by the Lanes on August 27, 1960 (Vol. II, R. 640), and at the time of the injuries of Mrs. Muncy on September 16, 1960, had only been driven six or seven hundred miles (Vol. II, R. 627).

The automobile had not been driven in excess of forty or fifty miles per hour, and no occasion for floorboarding the accelerator had ever arisen (Vol. II, R. 627-628). The Defendant, Mrs. Lane, diagonally parked this automobile against an eight inch curb on Main Street in Kilgore, Texas, and alighted from it (Vol. II, R. 696). She was misled into thinking that she had turned the ignition off by reason of the design of the ignition switch, which permitted the withdrawal of the key with the motor running while the car is in gear (Vol. II, R. 630; R. 639-641, 643, 721). To quote Mrs. Lane, "I thought I had (turned the ignition off). I had the key in my hand." ((Vol. II, R. 630).

The Accelerator Linkage

As Mrs. Hudnall was attempting to slide out on the driver's side from her position on the passenger's side of the front seat (Vol. II, R. 628-629, 681), the car gave a violent lurch (Vol. II, R. 681, 688), with the motor wide open and sounding as though someone had depressed the accelerator (Vol. II, R. 606; 613-614; 617-618).

The Circuit Court of Appeals held that direct testimony of Defendant, Mrs. Hudnall,[1] that she did not have her foot

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1. Appendix A, pages A4-A5, A6-A7, *infra*. We quote other parts of the Record to put the question and answer quoted in the opinion in proper context, as follows:

"Q. You didn't freeze on the accelerator pedal or anything like that, did you?

A. I don't think so.

Q. You admit being thrown about in there while the car was moving, don't you?

A. As I said, I don't remember.

Q. Well, you do remember that you didn't have any conscious knowledge of getting on a pedal and holding it down?

A. If I did—

Q. Did you do that?

A. If I did, I don't know it.

Q. Well, you would know if you did that, wouldn't you, Mrs. Hudnall?

A. Well, under the circumstances, I don't know if I would know it or not.

holding the accelerator pedal down was incompetent, and that the jury verdict could not be sustained on an inference therefrom that the accelerator linkage was defective. The Court wholly overlooked[2] the physical facts showing that Mrs. Hudnall must have been thrown about in the car in a way that would have prevented her from holding the accelerator pedal down. She testified that the experience caused her to have general soreness "all over" and bruises on her left arm (Vol. II, R. 685). This may well have resulted from her being violently buffeted against the interior of the car when it jumped the curb, moved violently across the sidewalk and into the side of the building (Vol. II, R. 596). An eyewitness, with opportunity of observation furnished by reason of his moving into the car from the passenger's side in an effort to stop it (Vol. II, R. 599), testified that while the car was pushing against the building with wheels continually spinning, squealing and burning rubber (Vol. II, R. 597), Mrs. Hudnall was screaming with her feet straight down from her knees, and kicking without bending her knees so that her legs moved up and down perpendicular to the floor (Vol. II, R. 599-600). The

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Q. But as it is right now, your best recollection is you did not do that?

A. So far as I know, I did not.

Q. That was your best recollection of it?

A. Yes." (Vol. II, R. 685-686).

"* * * Q. And you know that you didn't freeze or stick your foot on the accelerator and hold it down?

A. I don't know the accelerator from the brakes.

Q. Then you know that you didn't have your foot on anything there holding it down, don't you?

A. I did not.

Q. Ma'am?

A. I did not." (Vol. II, R. 687-688).

2. The opinion reads: "The testimony of other witnesses shed no light upon whether or not Mrs. Hudnall kept her foot on the accelerator" (Appendix A, page A5, *infra*).

same witness testified that the motor on the automobile "was wide open" until someone reached in to the car from the opposite side and relieved the car of its forward motion by stopping the motor (Vol. II, R. 598-599).

At least seven days before the calamity, Mrs. Lane had difficulty with the accelerator and hand brake. The latter just stopped working and the former caused her to drive home from work riding her foot brake (Vol. II, R. 624-625). The Court of Appeals interpreted the testimony as showing that this difficulty resulted from the engine idling high. However, Mrs. Lane testified positively that the accelerator mechanism was stuck, and her husband "unstuck it" by "jiggling" something (Vol. II, R. 627). Additional evidence from which the jury could find that a defect in design or manufacture caused the accelerator to stick is found in the testimony that Chevrolets have come off of the assembly line with accelerator linkage that was stuck (Vol. II, R. 902-903). Further, the Respondent admitted by discovery interrogatories and answers and shop manual drawings that at the time of the runaway the Chevrolet was equipped with an accelerator linkage with ten binding points where metal bore on metal (Intys. 49-50, Vol. I, R. 51-52, Answered Vol. I, R. 108, 109, with Exhibit attached, Vol. I, R. 116, Plaintiffs' Exhibit 6). During the first trial, it attempted to substitute for the admission testimony the contention that a later linkage design with non-friction sleeves at some of the binding points was in use on the runaway automobile (Defendant's Exhibits 9 and 10, Vol. II, R. 948-949; 1004-1005; 943-944; 945-946). It was for the jury to say which design of accelerator linkage was actually on the automobile, and whether or not some of the binding points actually stuck.

The particular Chevrolet was manufactured June 3, 1960, and shipped the same date, f.o.b., St. Louis (Vol. II,

R. 897). During its peak period, the assembly line in St. Louis produced fifty or sixty cars an hour (Vol. II, R. 912).

The Ignition Switch

The Court of Appeals[3] concluded that the principle set forth by the Dallas Court of Civil Appeals,[4] following an interlocutory hearing on a venue question, pronounced the law of Texas so as to deprive the petitioners of a trial by jury on the merits. The venue issue depended on whether the "ADMISSIONS OF GENERAL MOTORS CORPORATION" as set out in the Dallas Court's opinion established causative negligence flowing from the design of the ignition switch. In holding these admissions did not, the Dallas Court added,

> *"In the absence of evidence to the contrary,* we shall not presume that General Motors Corporation designed the car for use in a manner violative of the law, or that it should have anticipated such illegal use as probable." (Appendix B, page A19, emphasis added).

The Dallas Court did not have before it the additional evidence adduced at the trial on the merits by way of interrogatories and answers of the Respondent and testimony from six engineer employees of the Respondent. This testimony showed a deliberate design of the ignition switch so as to permit removal of the key in the "ON" position with the motor running (Vol. II, R. 644). This single key switch was designed for and first employed on an automobile with a manual transmission that did not permit the leaving of the automobile unattended and in gear with the motor running (Vol. II, R. 720-722, 735-36, 796-97, 945). When an automatic transmission system was placed on its Chevrolet

3. Appendix A, page A1, *infra.*

4. Appendix B, page A9, *infra.*

automobiles by the Respondent, the single key switch in combination with it permitted the automobile to be left unattended with the motor running and in gear (Vol. II, R. 735-736, 722).

The Respondent recognized the danger of an automobile being so left by reason of the combination of the switch and the automatic transmission at the time of the change, but considered it remote and the risk of injury from it to be outweighed by convenience to the customer (Vol. II, R. 965-966). At the same time, the Respondent recognized the kindred danger of a car being inadvertently started in gear through the combination of the ignition switch and automatic transmission. In this situation, when a human agency would be in control of the mechanism and have at hand sufficient braking power to stop the unintended movement (Vol. II, R. 897), the Respondent anticipated the danger and provided against the risk it engendered by installing a safety switch that prevented the motor of the car from being started unless the controls were in "PARK" or "NEUTRAL" gear (Vol. II, R. 955-956).

Respondent had information that its cars with an ignition switch permitting removal of the key in "ON" position had been inadvertently or accidentally left unattended with the motor running (Vol. II, R. 648-649). It was the expert opinion of Professor Varner, in response to hypothetical questions based on factual factors in evidence, that the ignition system in question was improper for use on a car with an automatic transmission (Vol. II, R. 791-793, 794, 795, 796, 797, 802).

Finally, the Respondent had at its command feasible and economic means to avoid the danger of the combination of the single key ignition switch and automatic transmission without impairing the utility of the car. Such means

were used on all American made cars except the Chevrolet and Buick (Vol. II, R. 646-647, 648). In fact, removal of the key from the "accessory" position was prohibited by Respondent as a reminder to guard against leaving the car with the radio or other accessories on (Vol. II, R. 641-643); and other simple devices were used as reminders to guard against other things that would not expose the car to becoming a "derelict", menacing the public with death and grievous bodily injury (Inty. 45-47, Vol. I, R. 50-51, Vol. II, R. 650-651).

ARGUMENT

The Accelerator Linkage

The Circuit Court of Appeals for the Fifth Circuit reexamined the facts established by the verdict of the jury, and concluded that the testimony of a party defendant that she was not holding the accelerator pedal down on a runaway automobile as it ground the plaintiff through a plate glass window was of no probative effect; that since the jury may have concluded to the contrary, or that the pedal was stuck due to some external interference, and also might have been due to the negligence of General Motors Corporation, a showing was made that the accident may have resulted from one of several causes, and that the verdict was therefore based on speculation and conjecture and could not stand.

This opinion conflicts with the decisions of this Court, which have uniformly and zealously preserved the right of trial by jury, as guaranteed by the Seventh Amendment, in all cases that have come before it, as follows:

Barney v. *Schmeider*, 9 Wall. 248, 251, wherein the Court stated that under the Seventh Amendment to the Constitution no re-examination of the facts found by a jury

is permissible, except by granting a new trial in the same Court in which the evidence was rendered.

Atlantic & Gulf Stevedores v. *Ellerman Lines,* 369 U. S. 355, 360, 7 L. Ed. 2d 798, 804, a tort action over which Federal jurisdiction existed alone by reason of diversity of citizenship, and wherein the Court declared that neither it nor the Court of Appeals could redetermine the facts found by the jury any more than the District Court could predetermine them; since the Seventh Amendment says that no fact tried by jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law. Further, that in cases where jurisdiction rests on diversity of citizenship, the right to trial by jury is a part of the remedy, just as it is in cases arising under the Jones Act and the Federal Employers Liability Act; since under *Byrd* v. *Blue Ridge Rural Electric Co-op, Inc.,* 356 U. S. 525, 538, 539, 2 L. Ed. 2d 953, 963, it was stated that in diversity cases, it is the Seventh Amendment that fashions the Federal policy favoring jury decisions of disputed fact questions.

The interest this Court manifests in preserving the right of trial by jury in diversity cases is thus exemplified in *Beacon Theatres* v. *Westover,* 359 U. S. 500, 501, 3 L. Ed. 2d 988, 992:

> "We granted certiorari, 356 U. S. 956, 2 L. Ed. 2d 1064, 78 S. Ct. 996, because 'Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.' Dimick v. Schiedt, 293 U. S. 474, 486, 79 L. Ed. 603, 611, 55 S. Ct. 296, 95 ALR 1150, 36 NCCA 184."

The importance of the question presented by Petitioner is also high lighted by the trend of lower Federal courts to deprive litigants of their rights of a jury determination in cases where jurisdiction is based on diversity of citizenship. Indicative of the trend in diversity cases have been the actions of the Circuit Court of Appeals for the Fifth Circuit in cases such as *Carolina Life Insurance Co.* v. *Williams,* 210 F. 2d 477; *Atlantic Coastline Railroad Co.* v. *Swafford,* 220 F. 2d 901; and *Phillips Petroleum Co.* v. *Gibson,*[5] 232 F. 2d 13. In each of these cases, this Court granted writ of certiorari and summarily reinstated the judgment of the District Court based on the jury verdict rendered, its action being reported respectively as follows: 348 U. S. 802, 99 L. Ed. 633; 350 U. S. 807, 100 L. Ed. 725; 352 U. S. 874, 1 L. Ed. 2d 77.

In 1964, the Court also reversed the case of *Theriot* v. *Mercer,* 262 F. 2d 754, 316 F. 2d 635, 377 U. S. 152, 12 L. Ed. 2d 206, by way of written opinion with instructions to enter judgment in accordance with the jury's verdict. These instances very likely could be multiplied, but those cited are illustrative of the tendency to substitute appellate findings for jury findings, to which this Court should bring a halt, as it did to a similar trend in F.E.L.A. cases.[6]

The refusal of the Court of Appeals to permit the jury to select which of several inferences as to the cause of the

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5. See Leon Green: Protection of Jury Trial in Diversity Cases Against State Invasions, 35 Tex. Law. Rev. 768.

6. *Rogers* v. *Missouri P. R. Co.*, 352 U. S. 500, 510, 1 L. Ed. 2d 493, 502, wherein it is said:

> "Special and important reasons for the grant of certiorari in these cases are certainly present when lower federal and state courts persistently deprive litigants of their right to a jury determination."

injury to Petitioner[7] it would credit is of a piece with the attitude of appellate courts in disposing of Federal Employers Liability Act cases prior to 1943. These efforts at curtailment of trial by jury were frustrated by the decisions of this Court decreeing that the very essence of the function of a jury is to select among conflicting inferences and conclusions, which requires a measure of speculation and conjecture on the jury's part in choosing what seems to it to be the most reasonable inference. Further, that there is a debatable quality about the very issue of negligence leaving fair minded men free to reach different conclusions thereon, which emphasizes the appropriateness of leaving the question to the jury. (*Tennant* v. *Peoria & Pekin Union R. Company*, 321 U. S. 29, 35, 88 L. Ed. 520, 523, 525; *Bailey* v. *Central Vermont Railway*, 319 U. S. 350, 353-354, 87 L. Ed. 1444, 1447; *Lavender* v. *Kurn*, 327 U. S. 645, 653, 90 L. Ed. 916, 923).

The effect of the Court of Appeals opinion is to deny to the jury the right of passing on the credibility of the witnesses, a privilege recognized in *Moore* v. *C. & O. Railway Company*, 340 U. S. 573, 576, 95 L. Ed. 547, 550, where there was only one witness to the transaction, and where the Court said: "it is the jury's function to credit or discredit all or part of the testimony".

The holding of the Court of Appeals also conflicts with the opinion entered by the same Court in *Travelers Insurance Company* v. *Rowand*, 197 F. 2d 283, 285, thus quoted:

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7. The Court speculated on what might have been, as follows:

> "The accelerator might have been held down by Mrs. Hudnall's foot. It might have stuck due to some external interference with normal action following the release of pressure applied by foot. It might have been due to negligence of General Motors in so designing or assembling the accelerator mechanism as to cause it to stick when pushed to the floor-board. There might have been some other cause for the motor racing and the wheels spinning." (Appendix A, p. A7, *infra*).

> "* * * but it was within the province of the jury, upon fair consideration, to believe or disbelieve all or any part of the evidence of this or any other witness where there was a conflict in the evidence or even if there was no conflict, where conflicting reasonable inferences might fairly be drawn from the undisputed facts."[8]

The evidence summarized on pages 3-9 hereof shows a sufficient basis for the jury's finding of causative negligence. It was convincing not only to the jury, but to the trial judge, who was intimately concerned with the trial, who had first hand knowledge of the applicable State principles hereafter set out, believed the case should go to the jury on both trials on the merits, and who overruled the motions for instructed verdict, for judgment notwithstanding the verdict, and for new trial (Vol. I, R. 506, 516, 527). See *Dick* v. *New York Life Insurance Company*, 359 U. S. 445-46, 3 L. Ed. 2d 935.

The disposition of this case by the Fifth Circuit Court of Appeals, if not corrected, will set a trend toward relieving automobile manufacturers of liability for mechanical and design defects at a time when loss of life and property through motor vehicle operation has reached an all time high. In 1965, traffic deaths in the United States increased to an estimated 49,000.[9] Disabling injuries were estimated at 1,800,000 for the same year, and less serious injuries totaling about the same number, with property damage accidents exceeding 11,000.000.[9]

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8. The Texas Rule is the same: *Ford* v. *Panhandle & Santa Fe Railway*, (S. Ct.) 252 S. W. 2d 561, 563, holding, "It was their (the jury's) province also to resolve conflicts and inconsistencies in the testimony of any one witness, as well as in the testimony of different witnesses (Citing cases)".

9. Hearings before a Sub-Committee on Executive Reorganization of the Committee on Government Operations, United States Senate, 89th Congress, second section; Traffic Safety: Examination and Review of Efficiency, Economy and Coordination of Public and Private Agencies' Activities for the Role of the Federal Government, Part 3, page 1105.

The Ignition Switch

The pronouncement of the Dallas Court of Civil Appeals that the manufacturer must exercise reasonable care in the manufacture of a chattel involving an unreasonable risk of causing harm to those whom the manufacturer should expect to be in the vicinity of its probable use was but a reiteration of the substantive law of Texas as pronounced in *Blickman, Inc.* v. *Chilton,* 114 S. W. 2d 646 and *Texas Bitulithic Co.* v. *Caterpillar Tractor Co.,* 357 S. W. 2d 406 (writ ref., n.r.e.).

The underlying principles of these cases were applied by the Texas Supreme Court as late as 1962 in *Strakos* v. *Gehring,* 360 S. W. 2d 787. In *Strakos,* the defendant contended that it was not responsible for a defect left in a highway because its work had been accepted and injury was caused by the negligence of another. The Court took occasion to say that:

> "As regards products liability for manufacturers and processors, the exceptions largely swallowed the rule. With Judge Cardozo's opinion in MacPherson v. Buick Motor Co., 217 N. Y. 382, 111 N. E. 1050, L.R.A. 1916 F., 696, it became established that a manufacturer has an affirmative duty to those who may be reasonably expected to use his products or to be in the vicinity of such usage, and hence breach of this duty by the production of articles that are dangerous to human safety while being reasonably used, will establish tort liability. See annotation, 164 A.L.R. 569. (Id. 789).
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> * * *
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> ". . . the modern approach is to place contractors on the same footing as manufacturers of goods and apply the same general principles of negligence even after acceptance of the work. (Id. 792).
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> * * *

> " 'The cause must be decided on the facts, not by a legal fiction set up to bar a factual decision' (Id. 793).
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> * * *
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> ". . . the facts of this case present a situation of 'concurrent negligence' which operated to produce the injury. . . . In such a case, 'all persons whose acts contributed to the injury are liable therefor, and the negligence of one does not excuse the negligence of the other.' " (Id. 794).

The substantive law of Texas that ". . . the negligence of one does not excuse the negligence of the other" (*Strakos* v. *Gehring, supra,* page 794), is applicable in cases such as ours, even if the negligence of the other is intentionally tortious or criminal. In *Reeves* v. *Tittle,* 129 S. W. 2d 364, 367, er. ref., the court quoted and applied the rule of the Restatement of Torts, to-wit:

> " 'If the realizable likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious or criminal does not prevent the actor from being liable for harm caused thereby.' "

The decision was cited with approval by Judge Norvell of the Texas Supreme Court when he was on the Court of Civil Appeals at San Antonio in *Kimbriel Produce Co.* v. *Mayo,* 180 S. W. 2d 504, 507, er. ref. w. m., and has received the sanction of the Texas Supreme Court in *City of Austin* v. *Schmedes,* 154 Tex. 416, 279 S. W. 2d 326, 331.

In the *Reeves* and *City of Austin* cases, *supra,* the defendants sought to avoid liability by reason of concurring acts of a third person in violation of the Penal Code, and it was held that the question was for the jury.

The Court of Appeals ignored the established substantive law of Texas, which holds that where a manufacturer

recognizes a hazard arising from the distribution of its products, but considers it so remote as to be outweighed by customer convenience (Vol. II, R. 965-966), the question of whether such conduct amounted to negligence is for a jury. Particularly is this true where the testimony shows further that the customer convenience was considered so slight as that it was not recognized by the automobile industry as a whole, but to the contrary, was made available on Chevrolets and Buicks alone (Vol. II, R. 648). This conception inevitably leads to the manufacturer being the sole arbiter of the care it need exercise. It may disregard that there may be temporary forgetfulness or negligence on the part of the operators of an automobile, despite the manufacturer's recognition of its design duty to make the product "idiot proof" (Vol. II, R. 930-931). The situation is aggravated when the testimony shows that the manufacturer could have avoided the injury by known and economic feasible means not destructive of the utility of the car and which had been in use by itself and all other American car manufacturers (*supra*, pages 8-9).

From the undisputed testimony of Mrs. Lane, Respondent's co-defendant, that she thought she had turned the motor off because she had the key in her hand, does not the jury have the right to reasonably conclude that, but for the negligent design of the switch in combination with an automatic transmission, the injuries would not have been sustained?

It has been judicially determined in Texas that an unattended car with the motor running exposes it to "... becoming a 'derelict' as it were, and the dangers attendant upon a vehicle being abandoned so as to become a menace to traffic or the public." *Rosner* v. *Harrell Drilling Co.*, 261 S. W. 2d 190, 193, error refused, n.r.e.

The holding of the Court of Appeals ordering judgment rendered for Respondent contrary to the jury verdict and the judgment of the trial court deprives Petitioners of the right of trial by jury, and is in conflict with the following federal and state court decisions, to-wit:

Rumford Chemical Works v. *Hygienic Chemical Co.*, 215 U. S. 156, 54 L. Ed. 137, 138, holding that where the record of a prior proceeding has not been put in evidence, ". . . the question here must be discussed, of course, on the evidence before the court below."

Compton v. *Elliott*, 126 Tex. 232, 88 S W. 2d 91, 95, holding that venue proceedings give rise to a dual trial ". . . once in the hearing of the plea of privilege and once in the trial of the merits, . . . and sometimes with inconsistent results." See also *Travelers Ins. Co.* v. *Employers Casualty Co.*, 380 S. W. 2d 610, reversing 370 S. W. 2d 105.

The cases holding that a presumption of identity of facts in two trials cannot be indulged, and the party claiming identity has the burden of so proving. *Harper* v. *Thompson*, 292 S. W. 263, 264; *Clem* v. *Fulghum*, 37 S. W. 2d 201, 204; *Yeager* v. *Dallas Coffin Co.*, 69 S. W. 2d 493, 494; *Angelina County Lumber Co.* v. *McKnight*, 265 S. W. 2d 246, 250.

The cases holding that absent an identity of facts produced on the trial on its merits with those produced on the trial on venue, the appeals decision did not constitute the law of the case. 4 Tex. Jur. 2d, Appeal & Error, Civil, #1011, page 701 and cases there cited.

The jury verdict that the switch was negligently designed was set aside by the Court of Appeals by the application of principles that turned on the sufficiency of the

evidence in the state interlocutory proceeding. In effect. this was the application by the Court of Appeals of a State standard to determine the sufficiency of the evidence. rather than the Federal standard. The question of which should apply, if not having been determined in favor of the Federal rule, was expressly left open for determination by this Court in *Dick* v. *New York Life Insurance Co.*, 359 U. S. 437, 445, 79 S. Ct. 921, 3 L. Ed. 2d 935; and *Mercer* v. *Theriot*, 377 U. S. 152, 156, 84 S. Ct. 1157, 12 L. Ed. 2d 206, 210. In setting aside the jury verdict that the Defendant negligently designed and assembled the accelerator linkage, the Court of Appeals held that it was not bound by the opinion of the Dallas Court to the effect that a fact issue was raised. This was done through the expedient of holding that the testimony of Mrs. Hudnall was of no probative value, because given without objection in answer to a leading question.

In both instances the right of trial by jury was precluded by standards foreign to both Federal and State proceedings. One can hardly imagine a clearer example of "judicial erosion" of the "essential guarantee of the Seventh Amendment" described by Mr. Justice Black in his dissent in *Galloway* v. *United States*, 319 U. S. 372, with whom Justice Douglas and Justice Murphy concurred.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted, and it is submitted that the case is a proper one in which to summarily order the vacation of the judgment of the Circuit Court of Appeals and the reinstatement of the judgment of the trial court.

Respectfully submitted,

FRANKLIN JONES
P. O. Drawer 1249
Marshall, Texas
WILLIAM HURWITZ
1021 First National Bank
Longview, Texas

By:.....
Attorneys for Petitioners

JONES, JONES & BALDWIN
P. O. Drawer 1249
Marshall, Texas

.....
Of Counsel.

CERTIFICATE OF SERVICE

I, Franklin Jones, attorney for Petitioners, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this day I served a copy of the foregoing Application for Writ of Certiorari on Mr. Leon Jaworski, counsel for Respondent, by mailing the same, first class, postage prepaid, addressed to his office at the Bank of the Southwest Building, Houston, Texas, dated this the ..... day of December, 1966.

.....

APPENDIX A

Opinion of Circuit Court of Appeals

(Caption Omitted)

Before TUTTLE, Chief Judge, JONES and WATERMAN,* Circuit Judges.

JONES, Circuit Judge: C. L. Lane and Alice Lane, his wife, on August 27, 1960, purchased a new Chevrolet automobile, manufactured by the appellant, General Motors Corporation, from the Smith Chevrolet Company of Henderson, Texas. On September 15, 1960, after the car had been driven five or six hundred miles at moderate speeds, Mrs. Lane drove the car to Duncan's Five and Ten Cent Store on the Main Street of Kilgore, Texas and diagonally parked against a curb about eight inches in height. On the front seat with Mrs. Lane was her mother, Nellie Hudnall. On the rear seat was a five-year old son of the Lanes. Mrs. Lane left the car and got her son from the rear seat. She had parked close to a truck on the right and suggested to her mother that she slide under the wheel and get out on the driver's side.

The ignition switch was of a design which had been used on Chevrolets since 1948 and was in use on General Motors' Buick cars. It had four positions: "Lock," "off," "on" and "start." The key could be removed from the "on" position with the motor running. If so removed, the switch could be turned on and off without the use of the key. The key could be removed from the "lock" position and the ignition would be cut off.

*Of the Second Circuit, sitting by designation.

In leaving the car Mrs. Lane had removed the key and left the ignition switch in the "on" position, with the car in drive gear, with the motor running and, apparently, without setting the brakes. As Mrs. Hudnall was leaving the car on the driver's side, the engine suddenly accelerated, the wheels spun, and the car jumped the curb and on to the sidewalk. The appellee, Barbara June Muncy, was on the sidewalk. The Lane car, with the motor racing, struck Mrs. Muncy and pushed her through a glass store window. Someone reached through the car window and cut off the ignition. Mrs. Muncy, joined by her husband, brought suit in the District Court of Dallas County, Texas, to recover for the severe injuries she had sustained, naming as defendants C. L. Lane, his wife Alice Lane, her mother Nellie Hudnall, Davis Smith, doing business as Smith Chevrolet Company, and General Motors Corporation. Each of the defendants, except General Motors, resided in Rusk County, Texas, and they filed pleas of privilege seeking to transfer the venue to Rusk County. The court sustained the pleas and in so doing held that no bona fide cause of action had been established against General Motors. The decision of the District Court of Dallas County was affirmed by the Texas Court of Civil Appeals. *Muncy v. General Motors Corporation*, 357 S. W. 2d 430. An application was made by the Muncys to the Supreme Court of Texas for a writ of error but, before a ruling was made they dismissed their application and took a voluntary non-suit in the state district court. The Muncys then filed suit in the United States District Court for the Eastern District of Texas against the same defendants as had been sued in the state court. One trial resulted in a mistrial. On a second trial the Muncys recovered a judgment for $225,000 against the Lanes, Mrs. Hudnall and General Motors. Only General Motors has appealed.

Mr. and Mrs. Muncy sought recovery against the appellant, General Motors Corporation, upon two theories. The first theory is that General Motors negligently designed the ignition switch used on the Lane automobile in a manner permitting the ignition switch key to be withdrawn with the motor running and that such negligent action was a proximate cause of the injuries sustained by Mrs. Muncy. The other theory is that General Motors negligently designed and assembled the Lane automobile in such manner that the accelerator would hang or stick when the motor was running and the car was in gear so as to cause the wheels of the car to revolve rapidly although no direct pressure was being applied to the accelerator by any human agency, and that such negligent action was a proximate cause of Mrs. Muncy's injuries.

The first of these contentions was considered and fully discussed by the Court of Civil Appeals of Texas in its opinion. Although the decision of the Texas court is not in any sense res judicata, it is the considered conclusion of this Court that the Texas court has clearly and correctly set forth the principles which control the issue presented by the claim of a defective design of the ignition switch. It follows that under the law of Texas the appellees cannot recover from General Motors upon their first theory. The Federal courts are bound by the law of Texas on this question. *Erie Railroad Co.* v. *Tompkins,* 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188. Two recent decisions[1] of other courts of appeal are in accord with the position to which we adhere.

In the district court and before this Court, the primary thrust of the Muncys' contention against General Motors is predicated upon their claim of a defective design of the

1. Evans v. General Motors Corporation, 7th Cir. 1966, 359 F.2d 822; Gossett v. Chrysler Corporation, 6th Cir. 1966, 359 F.2d 84.

ignition switch. It was also asserted before the district court, and it is here asserted that General Motors negligently designed and assembled the accelerator system of the Lane automobile and that its negligent action was a proximate cause of Mrs. Muncy's injuries.

There was evidence that an accelerator mechanism could be manufactured defectively and in such a manner that it would stick, and that a car with such a defective accelerator might have been delivered to a consumer purchaser. There was no positive evidence that the accelerator on the Lane car was defective. It gave no trouble before the accident. It gave no trouble after the accident. If any inspection was made of the accelerator equipment after the accident, it is not shown by the record before this Court.[2] There was evidence that sometime before the accident the engine of the Lane Chevrolet had idled high and that this was corrected by a carburetor adjustment. There was evidence that some brake repair or adjustment was made. There was no evidence that the carburetor or brake had anything to do with the accident in which Mrs. Muncy was injured or that would permit the jury to draw such an inference.

Mrs. Lane did not see her mother during the time the motor speeded and the car moved. Mrs. Hudnall was shocked. She could not remember how she moved from the right side of the car toward the left side of the car. She could not remember how far she had moved before the motor began racing. She could not remember what position she was in or what movement she had made. She said she did not know whether she got out on the driver's

2. This appeal is to be decided without consideration of the testimony before the state court of a mechanic "that he tested the accelerator linkage after the accident and inspected the accelerator and found nothing wrong." 357 S. W. 2d 430, 436.

side or the passenger's side. She knew nothing about how the motor was stopped. She did not know whether her foot struck the accelerator or not. She did not have any idea as to why the car jumped forward and didn't know whether the motor was running or not. She didn't think she froze on the accelerator pedal. She was asked if she remembered that she didn't have any conscious knowledge of getting on a pedal and holding it down, and in reply she said that if she did she didn't know it. In response to a general question as to her activities from the time her daughter got out of the car until it lurched forward, Mrs. Hudnall stated that she didn't recall anything she did at the time and she did not know where her feet were. Later, and after testifying that she didn't know the accelerator from the brakes, Mrs. Hudnall was asked, "Then you know you didn't have your foot on anything there holding it down, don't you?" Although she had twice denied having any recollection of the circumstances, she was led into giving an "I did not" answer to the question. The testimony of other witnesses shed no light upon whether or not Mrs. Hudnall kept her foot on the accelerator.

This is a diversity case and the law of Texas will provide the principles for determining liability. In the Texas case of *Muncy* v. *General Motors Corporation, supra,* the court accepted the Restatement rule as follows:

> A manufacturer who fails to exercise reasonable care in the manufacture of a chattel which, unless carefully made, he should recognize as involving an unreasonable risk of causing substantial bodily harm to those who lawfully use it for a purpose for which it is manufactured and to those whom the supplier should expect to be in the vicinity of its probable use, is subject to liability for bodily harm caused to them by its lawful use in a manner and for a purpose for which it is manufactured. Restatement, Torts § 395. 357 S. W. 2d 430, 435. See *Ford Motor Co.* v. *Mathis*, 5th Cir. 1963, 322 F. 2d 267.

The changes in the language of the above Restatement section made in Restatement 2d do not have any application here. It is the theory of the Muncys that Mrs. Hudnall pushed the accelerator to the floor and removed her foot but because the accelerator was defective, it stuck and the motor continued to run at full speed until a bystander cut off the ignition switch. There is no available hypothesis as to how the accelerator was activated except that Mrs. Hudnall stepped on it as she was moving from one side of the car to the other. If the evidence warranted the inference that she removed her foot or feet from the accelerator, and kept them removed, then it could be plausibly argued that there might be an inference drawn by the jury,[3] under the doctrine of res ipsa loquitur, that the accelerator stuck and that its sticking was caused by the negligent design or assembly of the accelerator.

We are not overlooking the general rule that questions of fact are for the jury. A corollary of this rule is that if there is no evidence of probative value to sustain a fact finding, a judgment based upon such finding will be reversed. *Wood* v. *Stone,* Tex. Civ. App. 359 S. W. 2d 68; *Texas & Pacific Ry. Co.* v. *Patton,* 5th Cir. 1894, 9 C.C.A. 487, 61 F. 259, aff. *Patton* v. *Texas & Pacific Ry. Co.,* 5th Cir. 1899, 37 C.C.A. 56, 95 F. 244, dismissed 166 U. S. 717, 17 S. Ct. 997, 41 L. Ed. 1186, aff. 179 U. S. 658, 21 S. Ct. 275, 45 L. Ed. 361. The only evidence from which it might be inferred that Mrs. Hudnall, having pressed the accelerator to the floor, took her foot off the accelerator and kept it off, is the statement, put into her mouth by counsel, that she didn't have her foot on anything holding it down. This statement, made in response to a leading question, is so

3. The general verdict for the Muncys does not indicate whether there was a finding against General Motors of negligence in the design of the ignition switch or in the design and assembly of the accelerator, or both.

inconsistent with her several times reiterated testimony of being without recollection as to what transpired that it is without probative force and is to be disregarded, even though there was no objection made to the leading question which elicited the statement. Therefore, if it could be said that there was a finding, implicit in the jury verdict, that Mrs. Hudnall did not hold the accelerator down, such finding could not be sustained since testimony which has no probative force cannot be made the basis of a finding. *Wood* v. *Stone, supra; Iowa Mutual Insurance Co.* v. *Redden,* Tex. Civ. App. 326 S. W. 2d 727; *Pruner* v. *Lovejoy,* Tex. Civ. App., 314 S. W. 2d 651.

The fact of an accident does not prove or create a presumption of negligence. *Interstate Circuit* v. *Le Normand,* 5th Cir. 1938, 100 F. 2d 160; *Emmons* v. *Texas & Pac. Ry. Co.,* Tex. Civ. App. 149 S. W. 2d 167; *Talley* v. *Beever & Hindes,* 33 Tex. Civ. App. 675, 78 S. W. 23. The accelerator might have been held down by Mrs. Hudnall's foot. It might have stuck due to some external interference with normal action following the release of pressure applied by foot. It might have been due to negligence of General Motors in so designing or assembling the accelerator mechanism as to cause it to stick when pushed to the floorboard. There might have been some other cause for the motor racing and the wheels spinning. The plaintiff, in an action to recover for personal injuries alleged to have been caused by a negligent act or omission of a defendant, must prove the act or omission upon which liability is predicated. If there is evidence of causation, the doctrine of res ipsa loquitur may be invoked to supply a deficiency of proof as to negligence. *National Hotel Co.* v. *Motley,* Tex. Civ. App. 123 S. W. 2d 461; *Bish* v. *Employers Liability Assurance Corporation,* 5th Cir. 1956, 236 F. 2d 62. Under Texas law the doctrine of res ipsa loquitur is not applicable on the facts of this case.

Although the governing substantive law is Texas law, the question as to whether the Muncys presented sufficient evidence to take her claim to the jury is a matter of Federal law. *Ford Motor Co.* v. *McDavid*, 4th Cir. 1958, 259 F. 2d 261, cert. den. 358 U. S. 908, 79 S. Ct. 234, 3 L. Ed. 2d 229. Where, as in the case before us, the accident may have resulted from one of several causes, for some of which the appealing defendant was not responsible, a verdict against such defendant is based upon speculation and conjecture and cannot stand. *New York Central Railroad Company* v. *Ambrose*, 280 U. S. 486, 50 S. Ct. 198, 74 L. Ed. 562; *Ford Motor Co.* v. *McDavid, supra; Interstate Circuit* v. *Le Normand, supra; Emmons* v. *Texas & Pac. Ry. Co., supra; Texas & Pacific Coal Co.* v. *Kowsikowsiki*, 103 Tex. 173, 125 S. W. 3.

We are led to the conclusion that the motion of General Motors for a directed verdict should have been granted. The judgment of the district court is reversed and the cause is remanded with directions to enter a judgment for General Motors Corporation.

REVERSED.

APPENDIX B

Opinion of Texas Court of Civil Appeals

(Caption Omitted)

DIXON, Chief Justice.

This is an appeal from an order sustaining a plea of privilege.

Appellants Barbara June Muncy and her husband Charles Muncy, residents of Kilgore, Gregg County, Texas, filed suit in Dallas County, Texas for personal injuries sustained by Barbara June Muncy in an automobile mishap in Kilgore, Gregg County, Texas.

The defendants, appellees here, are C. L. Lane and wife, Alice Hudnall Lane, and the latter's mother, Nellie Hudnall, a widow, all three of whom are residents of Overton, Rusk County, Texas, and Davis Smith, individually and doing business as Smith Chevrolet Company, a resident of Henderson, Rusk County, Texas. Also a defendant is General Motors Corporation, a Delaware Corporation, with a permit to do business in the State of Texas, its principal office and place of doing business in Texas being located in Dallas, Dallas County, Texas, where the suit was brought.

C. L. Lane and wife, Alice Hudnall Lane, Nellie Hudnall, and Davis Smith filed pleas of privilege seeking to have the suit transferred to Rusk County, Texas for trial. In reply appellants filed their controverting affidavits seeking to retain venue in Dallas County, under Subdivisions 4, 23, 27 and 29a of Art. 1995, Vernon's Ann. Civ. St. Only Barbara June Muncy and her husband Charles Muncy have appealed from the order sustaining the plea of privilege.

EVIDENCE

On the early afternoon of September 15, 1960 appellee Alice Hudnall Lane was driving a 1960 model Chevrolet four-door automobile which Mrs. Lane and her husband had purchased new on August 27, 1960. Sitting to the right of Mrs. Lane on the front seat was her mother Mrs. Nellie Hudnall. On the back seat was her five year old son.

Mrs. Lane parked the car head-in at an angle against the curb on the Main Street in Kilgore, Texas in front of Duncan's Variety Store. The curb at this point is six to eight inches in height. The sidewalk is sixteen to eighteen feet in width.

After parking the car Mrs. Lane took the ignition key from the ignition switch. She testified that she thought she had turned the switch off, but the evidence is plain that she had not done so. The 1960 model Chevrolet was so designed and constructed that it was possible to take the ignition key from the switch without turning off the motor and without taking the car out of gear. That is evidently what happened on this occasion, for there is uncontradicted testimony that the motor was still running after Mrs. Lane had taken the ignition key from the switch and had alighted from the car, unlocked the rear door, and taken her young son from the rear seat.

Meantime Mrs. Hudnall had found that she could not leave the car from the right side where she had been sitting because another car had been parked so close that the door on the rght side would not open wide enough to enable her to make her exit. Therefore she slid across the front seat from right to left in order to leave the car through the front left door.

While Mrs. Hudnall was attempting to leave the car through the left front door, the car motor, which had been

running quietly, suddenly and with a loud roar began running "wide open". At the same time the car lurched and started in motion, bounced against the curb two or three times, then jumped the curb, ran across the sidewalk against the front wall of Duncan's Variety Store, where it again bounced two or three times before some unknown person either cut off the motor or threw the car out of gear.

Unfortunately, appellant Mrs. Barbara June Muncy was a sidewalk pedestrian in front of Duncan's Variety Store when the runaway car crossed the sidewalk. She was pinned against the front wall of Duncan's Variety Store and sustained serious injuries. One of her legs was almost severed and later had to be amputated. She sustained other injuries.

Did Mrs. Hudnall inadvertently step on the accelerator as she was sliding along the front seat from right to left in order to make her exit through the left front door? The accelerator pedal is cradled beside a hump in the middle where the drive shaft goes back under the floor board. In a deposition Mrs. Hudnall testified that she did not know whether she had stepped on the accelerator. She does not drive an automobile and does not know the brake pedal from the accelerator pedal. She did not remember whether she slid across the front seat feet first or body first. She testified that she did not know whether she was partly out of the car when it suddenly burst into action. However, she also testified that she thought she had one leg in the car at the time, which must have been her right leg. To get out on the left side she had to slide under the steering wheel with her body.

There is some disagreement between counsel as to Mrs. Hudnall's testimony concerning whether she had "frozen" onto the accelerator, that is, whether she had

pushed the accelerator to the floor and kept it there continuously with her foot. In view of this disagreement we believe it well to quote her testimony in regard to the subject:

"Q. You know that you were planning or acting in the plan of moving your feet from the passenger's side of that car over to the driver's side?

"A. Yes.

"Q. And it was then that the automobile lurched and started up, you know that?

"A. I know that it did lurch.

"Q. And you know that it lurched after you started to move, don't you?

"A. Yes.

"Q. And you know that you didn't freeze or stick your foot on the accelerator and hold it down, don't you?

"A. I don't know the accelerator from the brakes.

"Q. Then you know that you didn't have your foot on anything there holding it down, don't you?

"A. I did not.

"Q. Ma'am?

"A. I did not.

"Q. You do know that. Thank you. Now, was the door open on the driver's side when you were attempting to get over to get out?

"A. Yes."

There is testimony to the effect that after the car burst into action the roar of the engine and the motion of the car and the wheels were continuous and steady.

Davis Smith testified that his company had sold the car to the Lanes and had given it the usual pre-delivery inspection before delivering it to them and had found nothing wrong with it.

Alvin Doyle, Jr., an automotive expert, testified at some length concerning the design and construction of the 1960 model Chevrolet and the linkage system between the accelerator and the carburetor, including the spring whose function it is to bring the accelerator back to position when pressure on it is released. In connection with his testimony several exhibits were introduced including an actual carburetor of the same model as that used in the Lanes' automobile. With the help of these exhibits Doyle described the various parts in the linkage system by which movement of the accelerator pedal is communicated by the accelerator and the transmission whereby the speed of the vehicle is regulated. He designated a number of points of friction and resistance in the carburetor and the transmission linkage. He further testified that the car, while parked with the motor running, would not have jumped the curb if the throttle had not in some way been opened with the car in gear.

Doyle's testimony also includes this question and answer:

> "Q. On the next assumption, Mr. Doyle, let's assume all of the facts I have stated to you and that the passenger instead of freezing on the throttle, was tramping on it; would it or not have remained stuck and in a continuous roar under the mechanical make-up of that model of Chevrolet if the throttle had been tramped on or jiggled?
>
> "A. No."

Steve Selph, an automobile mechanic, towed the car after the accident to the Center Chevrolet Company at

Kilgore, Texas, where it was stored for a time. Selph testified that he checked the car after the accident to see if anything was wrong with it. He checked the transmission to see if it would move or hang in gear, tested the accelerator linkage to see if it was working, inspected the carburetor and the gasoline feed, and operated the foot feed with the motor running. He found nothing wrong.

ADMISSIONS OF GENERAL MOTORS CORPORATION

In response to requests for admissions General Motors Corporation made certain answers which appellants assert are important in regard to the question whether appellants made out a bona fide cause of action against General Motors Corporation. Some of these admissions are:

(1) General Motors Corporation designed, manufactured, assembled and constructed the Chevrolet automobile sold by Smith Chevrolet Company to the Lanes, which automobile was involved in the accident in question.

(2) The said automobile was designed and constructed to permit (a) withdrawal of the ignition key with the ignition switch in an "on" position without stopping the motor, and (b) withdrawal of the key with the ignition switch in "on" position and the car in drive gear without stopping the motor.

(3) The said automobile was designed (a) to prevent the key from being removed from the ignition switch when said switch was in "off" position, and (b) to prevent the key from being removed from the ignition switch when in "off" position to guard against leaving the ignition switch in "off" position but not locked.

(4) The said automobile was designed and constructed (a) without an indicator light to come on for the specific purpose of warning when the ignition

key is removed from the ignition switch in an "on" position when (A) such switch is in "on" position and (B) when such switch is in "on" position and the motor is running.

(5) The automobile was designed and constructed without a buzzer to sound a warning for the purposes described in (4) above.

(6) A simple and uncomplicated design in construction of the automobile could have prevented removal of the ignition key from the ignition switch (a) when the switch is in "on" position; and (b) when the switch is in "on" position with the motor running.

(7) General Motors Corporation installed on some of its 1960 model cars other than Chevrolets and Cadillacs (a) an indicator light to show when the ignition switch is turned to "on" position if the parking brake is not released; (b) a safety buzzer which may be preset to any desired speed to warn when the speed should be reduced; and (c) an ignition switch with an "ACC" position, which position (A) permits the use of the radio and other accessories without having the ignition on; (B) prevents removal of the ignition key when the switch is in on "ACC" position; and (C) prevents removal of the ignition key when in "ACC" position should the radio be left on accidentally.

(8) General Motors Corporation could have installed devices on its 1960 model Chevrolets similar to the devices described in (7) above.

OPINION

Appellants' first five points of error are in substance as follows: (1) it was error to sustain the pleas of privilege on the theory that appellants' pleading and proof failed to show (a) General Motors Corporation was a resident of Dallas County, Texas; (b) a bona fide cause of action against General Motors Corporation; and (c) a joinable

cause of action against all defendants within the meaning of Subdivision 4, of Art. 1995, VACS; (2) it was error to sustain the pleas on the theory that appellants failed to plead and prove that General Motors Corporation had an agency or representative in Dallas County within the meaning of Subdivisions 23 and 27 of Art. 1995, VACS, and that appellants failed to prove that appellees are necessary parties within the meaning of Subdivision 29a of Art. 1995, VACS; (3) there is no evidence to support the judgment; (4) the evidence is insufficient to support the judgment; and (5) the judgment is so against the great weight and preponderance of the evidence as to render the judgment manifestly unjust.

[1] The third, fourth and fifth of the above points are too general to require our consideration, therefore we shall not discuss them individually or separately. Phillips v. Le Gallez, Tex.Civ.App., 329 S.W.2d 922; Redman v. Cooper, Tex.Civ.App., 160 S.W.2d 318; Universal Life Insurance Co. v Wallace, Tex.Civ.App., 149 S.W.2d 662. However, appellants' first point requires a review of the evidence, so the purpose of the second, third and fourth points will in effect be accomplished.

Subdivision 4 of Art. 1995, VACS, provides that if two or more defendants reside in different counties, suit may be brought in any county where one of the defendants resides.

[2] Our courts by judicial construction have required plaintiffs who seek to invoke Subdivision 4 to establish certain venue facts which are not specified in the Statute. In addition to proving that one of the defendants resides in the county where suit is pending the plaintiff must prove that the defendants are properly joined and that plaintiff has a bona fide cause of action against the resident defend-

ant. Stockyards National Bank v. Maples, 127 Tex. 633, 95 S.W.2d 1300; Park v. Wood, 146 Tex. 62, 203 S.W.2d 204. Appellees concede that appellants have adequately met the first two of the above requirements: that General Motors Corporation for venue purposes is a resident of Dallas County, Texas, where suit is pending, and that the nonresident defendants are proper parties to this suit. But appellees contend that appellants have failed to prove a bona fide cause of action against General Motors Corporation which admittedly manufactured the automobile involved in the accident. It is conceded that General Motors Corporation had no privity of contract with appellants.

Formerly the general rule seems to have been that a manufacturer of an article was not liable to a person with whom the manufacturer had no privity of contract when such person was injured as a result of negligence in the manufacture of the article. However, the old rule has either been abandoned or modified in most jurisdictions in such manner as to admit of many exceptions. For discussion of the subject see Flies v. Fox Brothers Buick Co., 196 Wis. 196, 218 N.W. 855, 60 A.L.R. 357; MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050; United States Radiator Corp. v. Henderson, 10 Cir., 68 F.2d 87; Yaun v. Allis-Chalmers Mfg. Co., 253 Wis. 558, 34 N.W.2d 853; and 65 C.J.S. Negligence § 100, pp. 618-633.

[3, 4] Appellants' first contention under their point No. one is that General Motors Corporation was negligent and liable to appellants for designing and constructing the Chevrolet car as it is described under the heading "ADMISSIONS OF GENERAL MOTORS CORPORATION" hereinbefore set out. We find ourselves unable to agree with appellants.

We believe that a correct statement of the rule in regard to a manufacturer's liability in this particular is that which is found in "Restatement of the Law of Torts", page 1073, § 395:

> "A manufacturer who fails to exercise reasonable care in the manufacture of a chattel which, unless carefully made, he should recognize as involving an unreasonable risk of causing substantial bodily harm to those who lawfully use it for a purpose for which it is manufactured and to those whom the supplier should expect to be in the vicinity of its portable use, is subject to liability for bodily harm caused to them by its lawful use in a manner and for a purpose for which it is manufactured."

See also same text on page 1084, § 398; Johnson v. Murray Co., Tex.Civ.App., 90 S.W.2d 920; J. C. Lewis Motor Co. v. Williams, 85 Ga.App. 538, 69 S.E.2d 816; Blitzstein v. Ford Motor Co., 5 Cir., 288 F.2d 738; Carpini v. Pittsburgh & Weirton Bus Co., 3 Cir., 216 F.2d 404; United States Radiator Corp. v. Henderson, 68 F.2d 87; Hartmon v. National Heater Co., 240 Minn. 264, 60 N.W.2d 804.

However, the undisputed facts of this case fail to bring it within the above rule. Mrs. Lane was well aware of the manner in which the ignition key and the switch were designed and constructed. She could have taken the car out of gear and stopped the motor from running while the car was parked. In fact she thought she had done so. She was not using the car in the manner and for the purpose for which it was intended—at least appellants have failed to prove that the car was being so used. There is no showing in this case that the car in question was dangerous if used properly and in the manner and for the purpose for which it was intended.

Furthermore, the car was not being lawfully used. Art. 6701d, § 97, VACS, expressly provides that no person

driving or in charge of a vehicle shall permit it to stand unattended without first stopping the engine, and effectively setting the brake thereon. In the absence of evidence to the contrary we shall not presume that General Motors Corporation designed the car for use in a manner violative of the law, or that it should have anticipated such illegal use as probable.

[5] Appellants' second contention under their point No. one is that the automobile was defectively made in that the accelerator would "stick" when wide open instead of coming back to its proper position when pressure was released on the accelerator pedal. Appellants claim that in this regard they made out a case against General Motors Corporation with independent evidence. In support of this contention appellants point to the testimony of Mrs. Hudnall that she did not "freeze" on the accelerator pedal, the testimony of another witness that the motor did not throttle down after it jumped the curb, but stayed at a steady grind and roar, and the testimony of Doyle, the automotive expert, who in response to a hypothetical question gave his opinion that if Mrs. Hudnall did not "freeze" onto the accelerator pedal with her foot, but if the pedal was tramped on or jiggled the accelerator would not have remained stuck and the motor would not have made a continuous roar.

Again we find ourselves unable to agree with appellants. Mrs. Hudnall was an interested witness and her testimony, though uncontradicted, did no more than raise a fact issue. We must presume that the trial court found all fact issues in such a way as to support the judgment. If the court disbelieved Mrs. Hudnall's testimony, there was no evidence that she did or did not "freeze" onto the accelerator pedal with her foot. In such case there was no basis for the hypothetical question on which the automotive

expert based his opinion. The testimony is that the car was given a pre-delivery inspection by the Smith Chevrolet Company of Rusk, Texas and nothing was found wrong with it. There is also testimony of the automobile mechanic Selph that he tested the accelerator linkage after the accident and inspected the accelerator and found nothing mechanically wrong. The court must have made an implied finding that the accelerator did not stick as a result of any defect or malfunction in its manufacture, and we are bound by said implied finding. James v. Drye, 159 Tex. 321, 320 S.W.2d 319.

Appellants' first point on appeal is overruled.

In connection with their second point appellants take the position that they have proved a cause of action against the Lanes by showing that Mrs. Lane left the car unattended without cutting the motor off, against Mrs. Hudnall by showing that she negligently stepped on the accelerator in attempting to make an exit from the car, and against Smith by showing that he sold the Lanes a car designed to permit removal of the ignition key without cutting the motor off, and the accelerator and the linkage in such condition that it would stick or hang in open position. They further take the position that the above named parties are necessary parties to this suit as required in order to bring the case within the terms of Subdivision 29a of Art. 1995, VACS. They also take the position that General Motors is a foreign corporation with an agent and office in Dallas County, Texas, therefore the case comes within the terms of Subdivisions 23 and 27 of the Statute.

In support of their contention that the Rusk County defendants are necessary parties to this action appellants cite us to Ladner v. Reliance Corporation, 156 Tex. 158, 293 S.W.2d 758 and Hill v. Melton, Tex.Civ.App., 311 S.W. 2d 496, decided by this Court.

[6] In our opinion in the latter case, of which opinion the present writer was the author, though we reversed the judgment on other grounds, we did hold that where two defendants were sued as joint tortfeasors and the suit was maintainable where one defendant resided, the other defendant was a necessary party to the suit under Subdivision 29a, Art. 1995, VACS. We cited the Ladner case by our Supreme Court as authority for our holding. In the Ladner case the Supreme Court said:

> "Where the plaintiff, if he recovers, will be entitled to a joint judgment against two defendants * * * the other defendant is a necessary party within the meaning of Subdivision 29a."

Upon reconsideration we have concluded that we gave the statement in the Ladner case too broad an interpretation and to that extent we were in error in our holding in Hill v. Melton, supra. In the Ladner case the Supreme Court was considering the question of contractual liability, not the liability of joint tort-feasers. This is true also of the two cases cited by the Supreme Court in support of its holding as above quoted.

There has not been a unanimity of holdings by our appellate courts in construing Subdivision 29a of Art. 1995, VACS. In First National Bank in Dallas v. Pierce (Comm. App. op. adopted) 123 Tex. 186, 69 S.W.2d 756 it was said that "necessary parties" is used in the new exception in the strict sense of the term as embracing "only those persons without whose presence before the court no adjudication of any of the subject matter involved in the litigation can be had."

But in Union Bus Lines v. Byrd, 142 Tex. 257, 177 S. W.2d 774, our Supreme Court said that the rule announced in First National Bank in Dallas v. Pierce, supra, "was

too restrictive, and is not now followed by this Court". The correct rule was said to be that the "other defendant is a necessary party within the meaning of Section 29a if the complete relief to which plaintiff is entitled under the facts of the case as against the defendant properly suable in that county can be obtained only in a suit to which both defendants are parties." The opinion cited Pioneer Building and Loan Ass'n v. Gray, 132 Tex. 509, 125 S.W.2d 284; Tarrant v. Walker, 140 Tex. 249, 166 S.W. 2d 900.

The rule stated in the Union Bus Lines case, supra, has since been followed in many cases; but the rule there stated is itself susceptible to differing interpretations, as will be seen by a study of appellate opinions on the subject.

[7] We have concluded that under the facts of the present case appellants, if they recover, can obtain the full relief to which they are entitled without joining the Rusk County defendants, therefore said defendants, appellees here, are not necessary parties within the terms of Subdivision 29a, Art. 1995, VACS. Lewis Boggus Motors, Inc. v. Hill, Tex.Civ.App., 340 S.W.2d 957; Liles v. Winters Ind. School District, Tex.Civ.App., 326 S.W.2d 182; Coleman County Tel. Co-op. Inc. v. Cunningham, Tex.Civ.App., 318 S.W.2d 461; Jaques Power Saw Co. v. Womble, Tex. Civ.App., 207 S.W.2d 206; Rogers v. Ft. Worth Poultry & Egg Co., Tex.Civ.App., 185 S.W.2d 165; Roberson v. Hunt, Tex.Civ.App., 179 S.W.2d 315; Tarrant v. Walker, 140 Tex. 249, 166 S.W.2d 900. Appellants' second point on appeal is overruled.

[8] Appellants' sixth point complains of the exclusion of certain evidence. Mrs. Lane in her deposition testified that after the accident the car was repaired by Smith Chevrolet Company. She had insisted that a new carburetor be put in. When Mr. Harrington brought the

car back to Mrs. Lane, Mr. Harrington told her that a new carburetor had been put in. Objection was made in behalf of Smith to this testimony on the grounds that such testimony was hearsay, that Mrs. Lane is not an expert and that the answers were an opinion and conclusion on her part. The objection was sustained.

Appellants say that the testimony should have been admitted on the ground that admissions of an agent are admission of his principal.

We see no error in the court's ruling. Mrs. Lane herself testified that a new carburetor was put in at her insistence. This certainly does not convict Smith Chevrolet Company of selling and delivering a car with a defective carburetor. The testimony of Doyle, the automotive expert, had to do mainly with the linkage system, not the carburetor itself.

In any event the error, if it was error, was harmless, and under Rule 434, Texas Rules Civil Procedure, does not furnish a basis for us to reverse the judgment sustaining the pleas of privilege. Appellants' sixth point is overruled.

The judgment of the trial court is affirmed.

APPENDIX C

Judgment Circuit Court of Appeals

(Caption Omitted)

Before TUTTLE, Chief Judge, JONES and WATERMAN,* Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court with directions, in accordance with the opinion of this Court;

It is further ordered and adjudged that the appellees, Barbara June Muncy and Charles Muncy, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

October 6, 1966

Issued as Mandate:

*Of the Second Circuit, sitting by designation.

APPENDIX D

Federal Rules of Civil Procedure 38(a), 43(a), (b)

RULE 38. JURY TRIAL OF RIGHT

(a) *Right Preserved.* The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

RULE 43. EVIDENCE

(a) *Form and Admissibility.* In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes of the United States, or under the rules of evidence heretofore applied in the courts of the United States on the hearing of suits in equity, or under the rules of evidence applied in the courts or general jurisdiction of the state in which the United States court is held. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

(b) *Scope of Examination and Cross-Examination.* A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or

private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 915

BARBARA JUNE MUNCY AND CHARLES MUNCY,
Petitioners,

v.

GENERAL MOTORS CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

LEON JAWORSKI
SAM H. HOOD
Bank of the Southwest Building
Houston, Texas 77002

Attorneys for Respondent

FULBRIGHT, CROOKER, FREEMAN,
BATES & JAWORSKI
Bank of the Southwest Building
Houston, Texas 77002

THOMAS W. WATKINS
3044 West Grand Boulevard
Detroit, Michigan 48202

Of Counsel

FIDELITY PRINTING COMPANY, INC., HOUSTON

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IN THE

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TO THE UNITED STATES COURT OF APPEALS
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BRIEF OF RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit may be found in 367 F. 2d 493. The opinion of the Texas Court of Civil Appeals in *Muncy* v. *General Motors Corp.* may be found in 357 S.W. 2d 430.

JURISDICTION

The jurisdictional requisites for filing a petition for certiorari are adequately set forth in the Petition. Respondent denies that the Petition presents any of the grounds re-

quired by Rule 19-1(b) of this Court for the granting of a writ of certiorari.

QUESTION PRESENTED

The only question presented is whether a verdict for Respondent should have been directed in a jury trial when:

(a) Under Texas law, the design of the ignition switch was not defective as a matter of law; and,

(b) There was no evidence that the accelerator linkage was defective.

STATEMENT

Respondent respectfully suggests that the statement contained in the opinion of the Court of Appeals for the Fifth Circuit properly sets forth all of the relevant facts. 367 F. 2d 493; 495-96

The statement of the case set forth by Petitioners (Pet. 3-9) is misleading and incomplete in the following respects:

(1) The statement that "no occasion for floorboarding the accelerator had ever arisen" is inaccurate. (Pet. 4) Undisputed evidence showed that the accelerator was inspected during assembly and tested at full throttle when the automobile was completely assembled. (R. 893-96)

(2) The statement that Mrs. Lane was "misled into thinking that she had turned the ignition switch off" (Pet. 4) is an unsupported conclusion of counsel. Mrs. Lane stated that she "knew you had to turn the switch to turn it off" (R. 637-38); she knew that the ignition lock was designed so that the key could be removed without stopping the engine (R. 637); and she did not remember whether or not she had turned the switch. (R. 638)

(3) Mrs. Lane did not remember setting the emergency brake. (R. 630, 636)

(4) Mrs. Hudnall did not have the remotest idea of what she did or did not do in attempting to get out of the car (R. 679-91), as is so accurately summarized by the Fifth Circuit. 367 F. 2d at 496-97

(5) The dealer who sold the Chevrolet to the Lanes followed Respondent's check list in preparing it for delivery. (R. 997-1000; 1002) The only repairs after delivery and before the accident were to the hand brake and an adjustment to the carburetor idle. (R. 998)

(6) There was undisputed testimony that after the accident only body damage was repaired. (R. 1001-02)

(7) The Lanes encountered no problem with the carburetor or accelerator linkage after the idle adjustment was made by the dealer. (R. 638)

(8) The Record is void of evidence that the accelerator linkage was defective in either design or manufacture.

ARGUMENT.

No Grounds for Review Are Shown by Petitioners

The Petition does not present any special and important reasons for granting a writ of certiorari within the scope of Rule 19 of the Rules of this Court.

The decision of the Court of Appeals does not conflict, but rather is in harmony, with the decisions of other circuits, *e.g., Evans* v. *General Motors Corp.*, 359 F. 2d 822 (7th Cir.), *cert. denied*, 385 U.S. 836 (1966); *Gossett* v. *Chrysler Corp.*, 359 F. 2d 84 (6th Cir., 1966). No state question has been decided in conflict with applicable state law, *e.g., Genell, Inc.* v. *Flynn*, 163 Tex. 632, 358 S.W. 2d 543 (1962); *Houston*

Lighting & Power Co. v. *Brooks*, 161 Tex. 32, 336 S.W. 2d 603 (1960).

No decision has been made regarding an undecided question of Federal law which has not been, but ought to be, settled by this Court; no decision has been made on a Federal question in conflict with applicable decisions of this Court; and no reason has been shown to call for an exercise of this Court's power of supervision, *e.g.*, *Moore* v. *Chesapeake & Ohio Ry.*, 340 U.S. 573 (1951); *Galloway* v. *United States*, 319 U.S. 372 (1943); *American Cas. Co. of Reading, Pa.* v. *Myrick*, 304 F. 2d 179 (5th Cir. 1962).

There is no showing by Petitioners that principles of importance to the public, as distinguished from the interest of the parties, are involved so as to meet the foregoing standards. *Rice* v. *Sioux City Memorial Parks Cemetery, Inc.*, 349 U.S. 70 (1955).

The Judgment of the Court of Appeals for the Fifth Circuit Is Correct

The ignition switch. The Court of Appeals for the Fifth Circuit properly held that the decision of the Texas Court of Civil Appeals in *Muncy* v. *General Motors Corp.*, 357 S.W. 2d 430 (Tex. Civ. App., 1962, no writ hist.) correctly states the law of Texas with respect to Petitioners' claim that the ignition switch on the 1960 Chevrolet was defectively designed. Since this case is a "diversity case," the Federal Courts are bound by Texas law. *Erie R. Co.* v. *Tompkins*, 304 U.S. 64 (1938). Petitioners assert that the Fifth Circuit gave *res judicata* effect to the decision of the Texas Court of Civil Appeals and that that decision "pronounced the law of Texas so as to deprive the Petitioners of a trial by jury on the merits." (Pet. 7, 17) The Court of Appeals properly held that the Texas decision was "not in any sense *res judicata*," but that it "clearly and correctly set forth

the principles which control the issue presented by the claim of a defective design of the ignition switch." 367 F. 2d at 496.

Petitioners cite no case, or other authority, which expresses a view contrary to the *Muncy* decision, *supra*, nor which questions the Texas Court in following the Restatement rule that:

> "A manufacturer who fails to exercise reasonable care in the manufacture of a chattel which, unless carefully made, he should recognize as involving an unreasonable risk of causing substantial bodily harm to those who lawfully use it for a purpose for which it is manufactured and to those whom the supplier should expect to be in the vicinity of its probable use, is subject to liability for bodily harm caused to them by its lawful use in a manner and for a purpose for which it is manufactured." 2 RESTATEMENT, TORTS § 395.

Unquestionably, Mrs. Lane did not use the Chevrolet in a manner and for a purpose for which it was manufactured. She ignored the "park" position of the gear shift lever. In violation of the law, she failed to set the parking brake and to turn off the engine.[1] This misuse, coupled with Mrs. Hudnall's negligence in exiting the automobile, caused Mrs. Muncy's injuries. Had Mrs. Lane availed herself of any of the safety devices, or had she turned the engine off, the accident would not have occurred — whether the key was in or out of the ignition lock. Mrs. Hudnall's negligence in exiting the Chevrolet, acting upon Mrs.

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[1] Article 6701d § 97, Texas Revised Civil Statutes states: "No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine and effectively setting the brake thereon, and when standing upon any grade, turning the front wheels to the curb or side of the highway."

Lane's negligence, caused the car to become a "derelict" inflicting Mrs. Muncy's injuries.[2]

Petitioners attempt to equate this case with such cases as *Strakos* v. *Gehring*, ... Tex. ....., 360 S.W. 2d 787 (1962); *City of Austin* v. *Schmedes*, 154 Tex. 416, 279 S.W. 2d 326 (1955); *Kimbriel Produce Co.* v. *Mayo*, 180 S.W. 2d 504 (Tex. Civ. App., 1944, err. ref. w.o.m.) and *Reeves* v. *Tittle*, 129 S.W. 2d 364 (Tex. Civ. App., 1939, err. ref.) (Pet. 14-15) which are concurrent negligence cases. This argument of Petitioners completely misses the point that under the Restatement rule, as adopted in Texas and the Fifth Circuit, Respondent is not required to protect against bodily harm unless there is "lawful use in a manner and for a purpose for which it is manufactured." Petitioners concede that this is "the substantive law of Texas." (Pet. 14) Interpretation of cases such as *Strakos, supra,* in the way suggested by Petitioners would render Respondent liable for any injury that results from unintended, careless or negligent use of automobiles, simply because it is conceivable that persons may — and do — improperly use automobiles in a manner that results in injury and death.[3]

In Texas, "Liability for negligence rests primarily on reason to anticipate injury and failure to perform the duty

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[2] In *Rosner* v. *Harold Drilling Co.*, 261 S.W. 2d 190 (Tex. Civ. App., 1953, err. ref. n.r.e.), cited by Petitioners (Pet. 16), the Texas Court of Civil Appeals placed the responsibility for the runaway automobile squarely upon the shoulders of the driver This same result occurred in *Moody* v. *Clark*, 266 S.W. 2d 907 (Tex. Civ. App., 1954, err. ref. n.r.e.).

[3] Petitioners refer to the annual toll of injuries and deaths upon the nation's highways, especially as noted in hearings before the Senate Subcommittee on Executive Reorganization (Pet. 13 n. 9), and urge that this Court should prevent any "trend toward relieving automobile manufacturers of liability for mechanical and design defects." Respondent's duties and responsibilities are defined by law. This case should not be decided on Petitioners' assumption that such a trend exists or upon an emotional basis.

arising on account of such anticipation." *Genell, Inc.* v. *Flynn,* 163 Tex. 632, 358 S.W. 2d 543, 546-47 (1962). The "question is whether the injury, or a similar injury, might reasonably have been anticipated as a natural and probable result" of an ignition lock designed so that the key could be removed while the engine was running. *International-G.N. Ry.* v. *Lowry,* 132 Tex. 272, 121 S.W. 2d 585, 588 (1938).

Respondent was under no duty to make the Chevrolet "fool proof" and the nature of Respondent's duty is an issue of law for the Courts. *Evans* v. *General Motors Corp.,* 359 F. 2d 822, 824 (7th Cir.), *cert. denied,* 385 U.S. 836 (1966); *Kahn* v. *Chrysler Corp.,* 221 F. Supp. 677, 678 (S.D. Tex. 1963). The nature of such duty, as imposed by Texas law, was set forth by the Texas Court of Civil Appeals in *Muncy* v. *General Motors Corp.,* 357 S.W. 2d 430 (Tex. Civ. App., 1962, no writ hist.) and Respondent was found to have discharged its duty by that Court and the Fifth Circuit. The Chevrolet was safe for its intended use, therefore Respondent's duty was discharged. *Evans* v. *General Motors Corp., supra; Gossett* v. *Chrysler Corp.,* 359 F. 2d 84, 87 (6th Cir. 1966).

The accelerator linkage. No evidence was ever presented that the accelerator linkage on the 1960 Chevrolet was defective. The only reasonable assumption from what little evidence that was presented is that the engine must have started racing because Mrs. Hudnall depressed the accelerator pedal.

Petitioners' argument that there was evidence that the accelerator linkage was defective consists of four shreds: (Pet. 5-6)

1. Mrs. Hudnall had general soreness and some bruises after the accident.

2. The carburetor was idling high some weeks before the accident.

3. Inspections made by Respondent during the manufacturing process have on occasion revealed Chevrolets with an accelerator which stuck.

4. The accelerator linkage was designed with friction points.

Mrs. Hudnall's soreness and bruises could have been caused by the car's crash into the brick wall, as well as the causes attributed by Petitioners. Mrs. Hudnall's injuries are not conclusive evidence that she was not in fact "stomping" on the accelerator. (R. 606) The witness who assisted Mrs. Hudnall from the car testified that he ran up to the car and saw Mrs. Hudnall holding her hands in front of her face, screaming hysterically and "kicking her feet" up and down. (R. 599-600; 610-11)

Most important, however, is that none of this is evidence of a defect in the accelerator, that the defect was the result of negligence on the part of Respondent, or that there was any causal connection between the fact that, after the Lane automobile hit Mrs. Muncy and the building, the engine continued to roar as though "wide open." The more probable, and at least equally permissible, inferences are that the motor continued to run "wide open" because Mrs. Hudnall was holding it down or was stomping on it or because the car hit the building.

The positive evidence was that the dealer adjusted the carburetor (R. 998, 1005-6) and that there was no further problem with it. (R. 636; 638) Furthermore, following the accident, no repairs were made to the accelerator linkage. (R. 1001-02)

No evidence was developed that the Lane automobile was one of the few found during inspections to have a sticking accelerator. Positive evidence was put forth that the Lane Chevrolet, like all Chevrolets, was inspected and tested with the engine running wide open. (R. 893-96)

No evidence whatsoever was presented to show that an accelerator linkage with friction points was either improperly designed or defective.

From these circumstances, to allow the jury to speculate on (1) whether a defect existed, (2) whether it was caused by Respondent's negligence, and (3) whether it caused this mishap would be the very conjecture condemned by this Court. "This would be speculation run riot." *Moore* v. *Chesapeake & Ohio Ry.*, 340 U.S. 573, 578 (1951) (Pet. 12); *New York Central R. Co.* v. *Ambrose,* 280 U.S. 486, (1930); *Ford Motor Co.* v. *McDavid,* 259 F. 2d 261 (4th Cir.) *cert. denied,* 358 U.S. 908 (1958); *Smith* v. *General Motors Corp.,* 227 F. 2d 210 (5th Cir. 1955). This is also the Texas rule.[4] *Texas & P. Ry. Co.* v. *Brown,* 142 Tex. 385, 181 S.W. 2d 68 (1944); *Missouri P. Ry. Co.* v. *Porter,* 73 Tex. 304, 11 S.W. 324 (1889). As the Texas Supreme Court said in *Bowles* v. *Bourdon,* 148 Tex. 1, 219 S.W. 2d 779 (1949):

> " 'Where the proof discloses that a given result may have occurred by reason of more than one proximate cause, the jury can do no more than guess or speculate as to which was, in fact, the efficient cause, the submission of such choice to the jury has been consistently condemned by this Court and by other courts.' " (219 S.W. 2d at 785)

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[4] Contrary to Petitioners' assertion (Pet. 18), the Fifth Circuit specifically held that the Muncys failed to present evidence under the *Federal law* to take their claim to the jury. 367 F. 2d at 498. The Federal law and Texas law are the same in this respect.

The fact that the accident occurred is not evidence of a defect allowing the jury to speculate regarding the cause.[5] *Ford Motor Co.* v. *McDavid, supra; Smith* v. *General Motors Corp., supra; Ford Motor Co.* v. *Mondragon,* 271 F. 2d 342 (8th Cir. 1959); *General Motors Corp.* v. *Wolverine Ins. Co.,* 255 F. 2d 8 (6th Cir. 1958).

Petitioners cite cases in which this Court has held that the evidence presented required submission of the issues to the jury in order to preserve the party's right to a trial by jury. (Pet. 9-13; 18) Respondent can cite a contrasting group of cases in which this Court has held that it would be improper to submit the issues to the jury in view of the complete lack of evidence, since this would involve the "mischance of speculation over legally unfounded claims." *Brady* v. *Southern Ry.,* 320 U.S. 476, 480 (1943); *Moore* v. *Chesapeake & Ohio Ry.,* 340 U.S. 573 (1951) (Pet. 12); *Eckenrode* v. *Pennsylvania R.,* 335 U.S. 329 (1948); *Galloway* v. *United States,* 319 U.S. 372 (1943); *Ford Motor Co.* v. *McDavid,* 259 F. 2d 261 (4th Cir.), *cert. denied,* 358 U.S. 908 (1958); *Jamieson* v. *Woodard & Lothrop,* 247 F. 2d 23 (D.C. Cir.), *cert. denied,* 355 U.S. 855 (1957). This approach does not advance the argument.[6] The point remains that Petitioners failed to establish any evidence of negligence.

Absent some evidence that Mrs. Lane's Chevrolet was in some way defective, the District Court should have directed a verdict for Respondent. The Fifth Circuit Court of Appeals has corrected this error. 367 F. 2d at 498

---

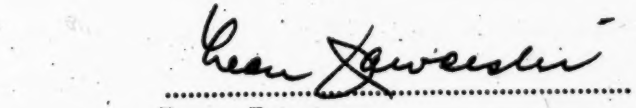
[5] The Fifth Circuit properly held that the doctrine of *res ipsa loquitur* did not apply to the facts of this case. 367 F. 2d at 498.

[6] Petitioners also claim that the decision of the Fifth Circuit "is of a piece with the attitude of appellate courts" in F.E.L.A. cases prior to 1943. This assertion that there is some attitude of "curtailment of trial by jury" prevalent among the Courts of Appeals need not be answered. (Pet. 12)

CONCLUSION

For the foregoing reasons, Respondent respectfully suggests that certiorari should be denied.

Respectfully submitted,



LEON JAWORSKI

SAM H. HOOD
Bank of the Southwest Building
Houston, Texas 77002

Attorneys for Respondent

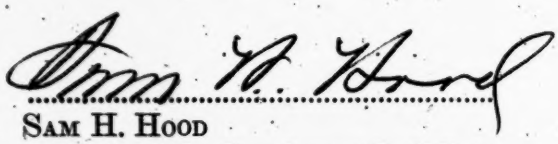
FULBRIGHT, CROOKER, FREEMAN,
BATES & JAWORSKI
Bank of the Southwest Building
Houston, Texas 77002

THOMAS W. WATKINS
3044 West Grand Boulevard
Detroit, Michigan 48202

Of Counsel

CERTIFICATE OF SERVICE

I, Sam H. Hood, one of the attorneys for Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 26th day of January, 1967, I served the foregoing BRIEF OF RESPONDENT IN OPPOSITION to the PETITION FOR WRIT OF CERTIORARI pursuant to Rule 33 by depositing two envelopes containing one copy each in a United States mail box, with first class postage prepaid, addressed respectively to Mr. Franklin Jones, P. O. Drawer 1249, Marshall, Texas, and Mr. William Hurwitz, 1021 First National Bank Building, Longview, Texas, attorneys for Petitioners.



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Houston, Texas 77002

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In the

Supreme Court of the United States

OCTOBER TERM, 1966

No. 915

BARBARA JUNE MUNCY AND CHARLES MUNCY,
Petitioners,

v.

GENERAL MOTORS CORPORATION,
Respondent.

On Petition For Writ of Certiorari To The United States Court of Appeals For the Fifth Circuit

PETITIONERS' REPLY TO RESPONDENT'S OPPOSITION

FRANKLIN JONES,
P. O. Drawer 1249,
Marshall, Texas,
WILLIAM HURWITZ,
1021 First National Bank Bldg.,
Longview, Texas,
Attorneys for Petitioners.

JONES, JONES & BALDWIN
P. O. Drawer 1249
Marshall, Texas
Of Counsel

WARLICK PRESS, INC.—P. O. BOX 10549—2262 VALDINA STREET—DALLAS—ME 1-2120

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On Peteition For Writ of Certiorari To The United States Court of Appeals For the Fifth Circuit

---

PETITIONERS' REPLY TO RESPONDENT'S OPPOSITION

To The Honorable Supreme Court of The United States:

The policy of this Court in matters here presented was succinctly and ably stated in the concurring opinion in *Wilkerson v. McCarthey*, 336 U.S. 53, 70, by Mr. Justice Douglas joined by Mr. Justice Murphy and Mr. Justice Rutledge as follows:

> "The criterion governing the exercise of our discretion in granting or denying certiorari is not who loses below

> but whether the jury function in passing on disputed questions of fact and in drawing inferences from proven facts has been respected."

We find no change in this criterion. It prevents erosion of the Constitutional right of trial by jury by State and lower Federal Courts. Certiorari is further required herein to assure respect for the decisions of this Court and the right of cross-examination and impeachment of adverse parties and witnesses. Consequently, Respondent's argument that "No Grounds for Review Are Shown by Petitioners" is wholly without merit.[1] (Respondent's Brief pp. 3-4).

Only two opinions of this Court are cited by the Circuit Court as support for its action. *Erie Ry. Co. v. Tompkins*, 304 U.S. 64, 82 L. Ed. 1188 (Pet. A3), however, is misapplied to hold binding on a trial on the merits principles that were founded on evidence in a State interlocutory venue proceeding, and which evidence is not shown to be and, in fact, is not substantially the same as that adduced on the merits in the Federal trial court. The case of *New York Central Ry. Co. v. Ambrose* (1930), 280 U.S. 486, 74 L. Ed. 562 (Pet. A6),

[1] This Court granted certiorari and summarily reversed the Fifth Circuit for rendering judgment contrary to the jury verdict on the same ground as here—that the verdict was based on "guess and speculation"—in the diversity case of *Williams v. Carolina Life Insurance Co.*, 348 U.S. 802, 99 L. Ed. 633, reversing 210 F. 2d 477. For much less reason than exists in the case at bar, this Court likewise summarily reversed the Fifth Circuit for rendering judgment contrary to the jury verdict in the diversity personal injury cases of *Swafford v. Atlantic Coastline Railroad Co.*, 350 U.S. 807, 100 L. Ed. 725, reversing 220 F. 2d 901; and *Gibson v. Phillips Petroleum Co.*, 352 U.S. 874, 1 L. Ed. 77, reversing 232 F. 2d 13; and by written opinion reversed the Fifth Circuit for the same reason in the recent diversity personal injury case of *Mercer v. Theriot*, 377 U.S. 152, 12 L. Ed. 2d 206, reversing 262 F. 2d 754, and 316 F. 2d 635. And see cases discussed Petitioners' Application for Certiorari pp. 9-18; and Rule 43(b) F.R.C.P.

which has been expressly repudiated, was cited to resurrect the ignoble twins of "speculation and conjecture", which have been laid to rest in their well deserved and dishonorable graves.[2]

The Accelerator Linkage.

If there were nothing more, Respondent's admitted "four shreds" of evidence concerning the accelerator linkage (Respondent's Brief pp. 7-8), is sufficient under the controlling Federal test of sufficiency of evidence set forth by this Court

---

[2] In *Wilkerson v. McCarthey* (1949), 336 U.S. 53, a F.E.L.A. case, this Court recognized the right of jury trial to be the same as in other negligence cases, and held: "In reaching its conclusion as to negligence, a jury is frequently called upon to consider many separate strands of circumstances, and from these circumstances to draw its ultimate conclusion on the issue of negligence." (Id., 63). In the concurring opinion Mr. Justice Douglas, joined by Mr. Justice Murphy and Mr. Justice Rutledge, cited *New York Central Ry. Co. v. Ambrose,* supra, as illustrative of the error the Supreme Court had formerly committed in leading "* * * the way in overturning jury verdicts rendered for employees." (I.d. 69). It was then stated: "The basis of liability under the Act is and remains negligence. Judges are not always agreed as to what facts are necessary to establish negligence. We are not in agreement in all cases * * * The historic role of the jury in performing that function * * * is being restored in this important class of cases." (I.d. 69, 71).

In *Lavender v. Kurn,* 327 U. S. 645, this Court expressly disposed of "speculation and conjecture" thusly: "It is no answer to say that the jury's verdict involved speculation and conjecture. * * * a measure of speculation and conjecture is required on the part of those whose duty it is to settle the dispute by choosing what seems to them to be the most reasonable inference. Only when there is a complete absence of probative facts to support the conclusion reached does a reversible error appear. But where, as here, there is an evidentiary basis for the jury's verdict, the jury is free to discard or disbelieve whatever facts are inconsistent with its conclusion. And the appellate court's function is exhausted when that evidentiary basis becomes apparent, it being immaterial that the court might draw a contrary inference or feel that another conclusion is more reasonable." (Id. 653).

See also the later cases cited in Footnote 1, supra, and those cited and discussed pages 9-13 of the Petition.

in *Lavender v. Kurn*, supra, and since followed. Much less was required by this Court to reverse the recent four diversity cases from the Fifth Circuit cited in Footnote 1., supra.

Lest it be overlooked, we again respectfully call the Court's attention to the fact that there is positive evidence that item 2 of the admitted "four shreds" was a sticking accelerator mechanism (R. Vol. II. 624-625, 627) and not a fast idling carburetor.

Further, and most convincing of improper design was Respondent's tremendous, but unsuccessful, effort to convince the jury and trial court that an accelerator linkage with non-friction nylon sleeves had replaced the linkage with ten binding points, which it previously admitted was the one in use — item 4, of the "four shreds". (R. Vol. II. 692-694; Plaintiffs' Exhibit 6, R. Vol. I. 116; Defendant's Exhibit 9 and 10, R. Vol. II. 948-949, 1004-1005, 943-946).

The Ignition Switch—
Automatic Transmission Combination.

The record reveals that much evidence was obtained after the opinion by the Dallas Court of Civil Appeals of May 11, 1962 (357 S.W. 2d 430). This additional evidence was obtained by depositions and interrogatories under the Federal Rules of Procedure and by testimony of witnesses that never appeared in the State venue hearing. It was taken and presented to fill the gap, if any there was, indicated by the interlocutory venue opinion. This accounts for the absence, no doubt, of any attempt by Respondent to bring forward the

record in the State venue proceeding to substantiate any claim that the evidence there was substantially the same as here.

The evidence here reveals: (1) Respondent's recognition of a danger in combining the switch, designed as it was, with an automatic transmission; (2) Respondent's knowledge of its cars, so designed, being inadvertently left unattended with the motor running; (3) that Respondent prevented removal of the key from the accessory position as a reminder to turn off the radio and thereby guard against nothing more dangerous than leaving the car unattended with the radio on; and (4) that the tragedy would not have happened but for this combined design, because Respondent's co-defendant thought she had turned the motor off since she had the key in her hand. (Pet. 4, 7-9; R. Vol.II pp. 720-722, 735-736, 796-797, 965-966, 648-649, 641-643, 630).

Thus, the evidence showing, or at least giving rise to a reasonable inference, that the tragedy would not have occurred but for the combined design of the questioned switch and the automatic transmission, and that there was a realizable likelihood that third persons might act as did Respondent's co-defendants, the jury was warranted in finding Respondent liable.

This is the law announced in the Restatement of Torts and the established law of Texas, Respondent's specious arguments to the contrary notwithstanding (Respondent's Brief

pp. 4-7). *Strakos v. Gehring*, (Tex. Sup. Ct. 1962) 360 S.W. 2d 787, supra; *Texas Bitulithic Co. v. Caterpillar Tractor Co.*, 357 S.W. 2d 406 (writ ref., n.r.e.), the latest expression on the subject by the Dallas Court of Civil Appeals; *Blickman, Inc. v. Chilton* 114 S.W. 2d 646; *Reeves v. Tittle*, 129 S.W. 2d 364, 367, er. ref.; *Kimbriel Produce Co. v. Mayo*, 180 S.W. 2d 504, 507, er. ref. w. m.; and *City of Austin v. Schmedes*, 154 Tex. 416, 279 S.W. 2d 326, 331. The authorities from other States and Federal Circuits cited by the Circuit Court and Respondent do not involve the substantive law of Texas and are of no consequence even if they support the propositions for which they are cited, which they do not. Since authorities from other jurisdictions are of no controlling effect, we purposely refrain from citing or discussing the many that support the judgment of the trial court.

Article 6701d, Sec. 97, Texas Revised Civil Statutes, and *Rosner v. Harrell Drlg. Co.*, 261 S.W. 2d 190, do not insulate Respondent against liability for its own negligence, as Respondent would lead the Court to believe (Respondent's Brief, pp. 5 and 7). On the contrary, said authorities support the jury verdict by illustrating the magnitude of the danger resulting from the combination of the questioned switch with an automatic transmission.

None of the cases cited by the Fifth Circuit or respondent indicate, even in half measure, that the evidence did not raise an issue for the jury under the substantive law of Texas.

And none of the cases cited authorize a substitution by the Fifth Circuit of its findings for those of the jury.[3]

Moore v. Chesapeake & Ohio Ry., 340 U.S. 573 (1951), the only other Supreme Court decision cited by Respondent to support the rendition of judgment contrary to the jury verdict, does not give it the comfort it desires. It was there claimed that Petitioner's deceased was thrown from the train by a sudden stop which was negligence. The engineer, the only witness called by Petitioner, testified that only one stop was made and that was after he saw the deceased fall, and the stop was made to avoid injuring him. This too was a five to four decision, has never been cited by this Court except in dissenting opinions and in *Rogers v. Missouri P. R. Co.*, 352 U.S. 500, 510, 1 L. Ed. 2d 493, 502, to show that it, the *Moore* case, the *Eckenrode* case and the *Brady* case, supra, were the only F.E.L.A. cases since 1939 in which the Supreme Court of the United States affirmed on the ground that no question for the jury was presented.

CONCLUSION

For the foregoing reasons and those set forth in the Petition for Certiorari, the writ should be granted; and it is respectfully submitted that this is a proper case for an order

[3] To bolster the rendition of judgment contrary to the jury verdict and judgment of the trial court, Respondent cites *Brady v. Southern Ry.*, 320 U.S. 476 (1943), *Eckenrode v. Pennsylvania Ry.*, 335 U. S. 329 (1948), and *Galloway v. United States*, 319 U. S. 372, (1943). Each of these cases are five to four decisions and are prior in time to *Wilkinson v. McCarthey*, supra, which cites and follows *Lavender v. Kurn*, supra. These later cases expressly repudiate the principle for which these earlier cases are cited.

summarily vacating the judgment of the Circuit Court of Appeals and reinstating the judgment of the trial court.

Respectfully submitted,

FRANKLIN JONES,
P. O. Drawer 1249,
Marshall, Texas,

WILLIAM HURWITZ,
1021 First National Bank Bldg.,
Longview, Texas,

By .....
Attorneys for Petitioners.

JONES, JONES & BALDWIN
P. O. Drawer 1249
Marshall, Texas
Of Counsel

CERTIFICATE OF SERVICE

I, Franklin Jones, one of the attorneys for Petitioners, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this day I served a copy of the foregoing Reply To Respondent's Opposition on Mr. Leon Jaworski and Sam H. Hood, counsel for Respondent, and Mr. Thomas W. Watkins, of counsel, by mailing the same, first class, postage prepaid, addressed to their office at the Bank of the Southwest Building, Houston, Texas 77002, and 3044 West Grand Boulevard, Detroit, Michigan 48202, respectively dated this the .... day of February, 1967.

.....

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In the

Supreme Court of the United States

OCTOBER TERM, 1966

No. 915

BARBARA JUNE MUNCY AND CHARLES MUNCY,
Petitioners,

v.

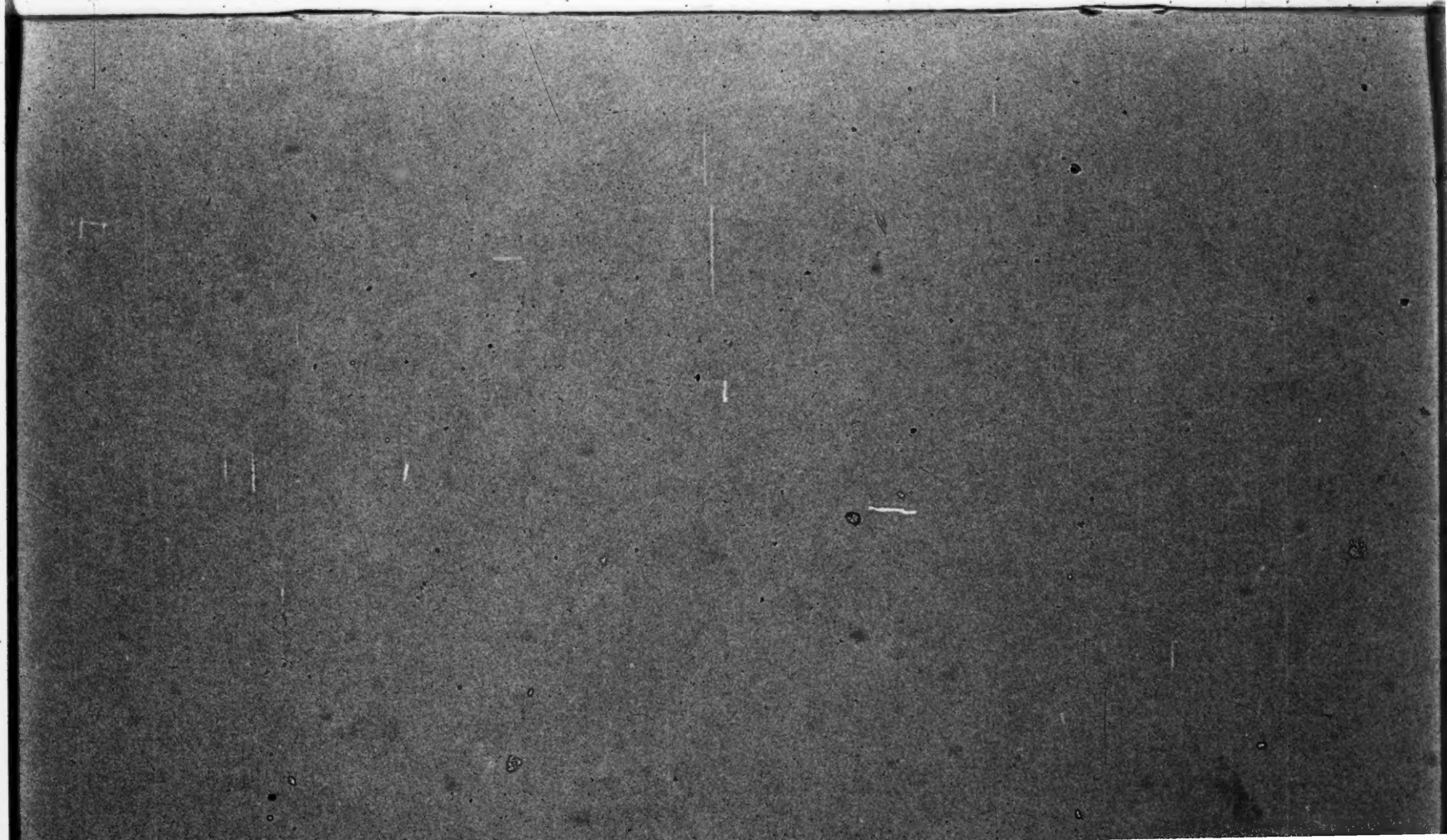
GENERAL MOTORS CORPORATION,
Respondent.

Petition For Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR REHEARING ON BEHALF OF PETITIONERS

FRANKLIN JONES,
P. O. Drawer 1249,
Marshall, Texas,
WILLIAM HURWITZ,
1021 First National Bank Building,
Longview, Texas,
Attorneys for Petitioners.

WARLICK PRESS, INC.—P. O. BOX 10543—2263 VALDINA STREET—DALLAS—ME 1-3130



Preface

Mr. Justice Black is of the opinion that "Certiorari should be granted" in this runaway-curb-jumping car-pedestrian tragedy. The Court of Appeals directed judgment contrary to a jury verdict of causative negligence. From recent decisions of this Court, it would appear that Mr. Justice Black was not alone in his opinion, and the prayed for relief should be granted.

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Exh. B, Motion altered to show presentation and filing of Motion for Directed Verdict at close of all the evidence April 9, 1964, in lieu of actual date April 18, 1964 ---- 9.

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In the

Supreme Court of the United States

OCTOBER TERM, 1966

No. 915

BARBARA JUNE MUNCY AND CHARLES MUNCY,

Petitioners,

v.

GENERAL MOTORS CORPORATION,

Respondent.

PETITION FOR REHEARING ON BEHALF OF PETITIONERS

I.

The fact that the printed record erroneously reflects that the renewal of a Motion for Directed Verdict was presented on behalf of the Respondent at the close of *all of the evidence,* when in fact the original instrument shows it was not presented or filed until after the verdict was received and judgment entered thereon, constitutes substantial grounds available to the Petitioners for granting the Writ, although the point has not been previously presented (Sup. Ct.

Rule 58(2)). The decision of this Court in *Neely v. Eby Construction Company*[1] to the effect that an appellate court cannot consider the sufficiency of the evidence, "where the verdict loser has failed strictly to comply with the procedural requirements of Rule 50(b)", compels the Petitioners to call to the attention of the Court this substantial reason for granting a writ. The importance of the question is emphasized by the fact that someone considered it grave enough to justify the spoilation of a filed instrument by falsifying its date of filing and altering the wording in its body.

The "Renewal of Motion for Directed Verdict" (Vol. I, R.505), although appearing in the printed record as having been presented at the close of all of the evidence in the case, was actually made and filed on April 18, 1964, at a time after the verdict had been returned and judgment entered for the Petitioners in the case (See Appendix attached and explained, below).

The record sheet made by the Clerk during the trial (Exhibit A, page 2, p. 8 herein) reflects that no renewal of a motion for directed verdict was made after the case was reopened and additional evidence was taken (also see Vol. II, R.1007). The date of filing of the Renewal Motion appearing in the record (Vol. I, R.505) and the body of the Renewal Motion as originally filed on April 18, 1964, were altered without the knowledge or consent of the Petitioners or their counsel after the instrument was filed, so as to

[1] Decided March 20, 1967, 18 L. Ed. 2d 75, 82 (8, 9).
The trial and lower appellate courts have frequently so held, See: *Massaro v. United States Lines Co.*, 307 F. 2d 299, 303 and cases there cited.

indicate that it was presented on April 9, 1964, instead of April 18, 1964. (See Exhibit B, p. 9 herein, the altered Motion, showing alteration on its face, and Exhibit C, p. 10 herein, showing the copy of the same Renewal Motion which was not altered). While the alteration of the words "New Trial" to "Directed Verdict" is clearly discernible on the attached photostatic copy, the alteration of the date of filing can be better discerned by an examination of the original instrument.

Further evidence that the date of filing of the Renewal Motion was changed is found in the transmittal letter to the Clerk from counsel for Respondent under date of April 16, 1964 (Exhibit D, p. 1, p. 11 herein), and the notification to attorneys of record of the filing of the Renewal Motion on April 18, 1964 (Exhibit E, p. 13 herein). The civil docket sheets likewise show that the Renewal Motion for Directed Verdict (Exhibits B and C, pp. 9 and 10 herein) was filed on April 18, 1964 (original or old docket sheet, Exhibit F, line 7, p. 7, p. 20 herein; Exhibit G, line 6½, p. 7, showing interlineation of altered file date, p. 27 herein).

Certified photostatic copies of all exhibits are attached to the signed copy of this petition, and reproduction of the same is made in the appendix attached.

II.

If the conclusion of the Circuit Court that the testimony of the Co-Defendant, Mrs. Hudnall, was of no probative value because given in response to a leading question to

which objection was not made, and hence "no evidence", the case should have been remanded and not rendered for Respondent. The Petitioners should at some time have had the opportunity of rephrasing the question, if its form did indeed rob the answer of probative effect (which is denied). This could have been done had objection been made in the trial court—doubtless one of the reasons for the salutary rule that appellate complaint may not be made as to the admissibility of testimony without an objection having been made at the time of trial.

It is pointed out that the Dallas Court of Appeals held that the same deposition testimony of Mrs. Hudnall was a sufficient basis for a finding for Petitioners had the trier of the facts so found[2], and which the jury did find on the trial on its merits. Furthermore, our case was not "pitched on the total lack of power in the Court of Appeals to direct entry of judgment for respondent"[3] as in the *Neely* case, where this Court indicated that "where the Court of Appeals sets aside the jury's verdict because the evidence was insufficient to send the case to the jury, it is not so clear that the litigation should be terminated."[4]

---

[2] Petition for Certiorari, A19, 357 S.W. 2d 430, 436(5)—Mrs. Hudnall's "testimony * * * did no more than raise a fact issue. We must presume that the trial court found all fact issues in such a way as to support the judgment." Holding the same and that only the evidence and reasonable inferences which tend to support the case need be looked to, are *Berry v. U. S.*, 312 U.S. 450, 456, 61 S. Ct. 637, 640, 85 L. Ed. 945; and *Wilkerson v. McCarthey*, 336 U.S. 53, 57, 69 S. Ct. 413, 415, 93 L. Ed. 497.

[3] Petition for Certiorari—"Questions Presented," p. 2.

[4] *Neely v. Eby Const. Co.* (March 20, 1967) 18 L. Ed. 2d 83(12), 85(16).

PRAYER

The Petitioners pray that the Court grant this Petition for Rehearing and reconsider their Petition for Certiorari; that this Court issue its Writ of Certiorari or other Writ or suitable order to the Clerk of the United States District Court for the Eastern District of Texas, Marshall Division, requiring that the original of all of the instruments brought forward in the Appendix attached be forwarded under proper safeguards to this Court for examination, or if this Honorable Court considers that procedure for bringing such original instruments before the Court should be initiated in the Circuit Court of Appeals for the the Fifth Circuit or the U. S. District Court for the Eastern District of Texas, that it delay disposition of this Petition for Rehearing until such time as the originals of said records may be procured through such proceedings, to the end that they may be considered; and that upon final hearing this Court grant Certiorari as prayed for in the original Petition on file and in this petition.

Respectfully submitted,

JONES, JONES & BALDWIN,
P. O. Drawer 1249,
Marshall, Texas,
WILLIAM HURWITZ,
1021 First National Bank Building,
Longview, Texas,

By: .....
Attorneys for Petitioners.

CERTIFICATE OF COUNSEL

Franklin Jones, counsel for the Petitioners, certifies that this Petition for Rehearing is presented in good faith and not for delay, and that the Petition is restricted to the grounds specified in Rule 58, Sub-paragraph 2, this the ..... day of May, A.D., 1967.

CERTIFICATE OF SERVICE

I, Franklin Jones, one of the attorneys for Petitioners, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this day I served a copy of the foregoing Petition for Rehearing on Behalf of Petitioners on Mr. Leon Jaworski and Sam H. Hood, counsel for Respondent, and Mr. Thomas W. Watkins, of counsel, by mailing the same, first class, postage prepaid, addressed to their office at the Bank of the Southwest Building, Houston, Texas 77002, and 3044 W. Grand Boulevard, Detroit, Michigan 48202, respectively, dated this the ..... day of ....., 1967.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

DIVISION Marshall DATE 4-9-64

JUDGE _____ REPORTER Allan Burbage, J

Barbara Jeni Muncy et vir
PLAINTIFF

VS

General Motors Corp. et al
DEFANDANT

CIVIL NO. 906

JURY ✓

COURT _____

ATTORNEYS FOR PLAINTIFF See Preceding Page

ATTORNEYS FOR DEFENDANT See Preceding Page

THIS DAY CAME THE PARTIES BY THEIR ATTORNEYS AND THE FOLLOWING PROCEEDINGS WERE HAD:

4-9-64 (9:00 AM) - Jr trial - 3rd day
(9:15 AM) - Defendants Gen Motors, Davis Smith dba Smith Chevrolet Co and Deft C. L Lane, et ux and Mrs Nellie Hudnall Rest
Oral Motion of Deft Davis Smith for Dir Verdict (at close of all the evidence) (Overruled at this time)
Oral Motion of Deft. Gen Motors for

JAMES R. COONEY, CLERK

Hazel E Studdard
DEPUTY

(over)

Directed Verdict (Renewed motion made at end of Last Trial) (at close of all the evidence): Overruled

10:00AM- Deft Davis Smith introduces additional testimony:
Witness: Davis Smith

10:20AM- Deft Davis Smith again closes:
Arguments Begin

12:28PM - Arguments Concluded
1:30PM - Court Begins Charge
2:10 P.M. - Court Finishes Charge
2:12 P.M. - Jury Begins Deliberation
Counsel makes Objections to Charge
all of Defendants' Objections Overruled

Case Be Submitted on Interrogatories

5:17 PM - Filed Jury Verdict in favor of Plaintiff and against Defendants, General Motors Corporation, C. L Lane + wife and Mrs Nellie Hudnall, and assessing damages at $225,000.00

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

FILED

M. 4-9 1964

James R. [illegible], U. S. Dist. Clerk

By Carlyann Gist DEPUTY

BARBARA JUNE MUNCY, ET VIR

VS.

GENERAL MOTORS CORPORATION, ET AL

CIVIL ACTION NO. 906

(Title Omitted)

134

RENEWAL OF MOTION FOR DIRECTED VERDICT

After conclusion of presentation of all the evidence, and after announcement of "rest" by all parties, General Motors Corporation, one of the Defendants in the captioned cause, hereby renews the Motion for Directed Verdict heretofore presented at the conclusion of the presentation of evidence by Plaintiffs, and after announcement of "rest" by Plaintiffs.

Respectfully submitted,

KENLEY, RITTER & BOYLAND

BY [signature]

O R D E R

The renewed Motion for Directed Verdict is by the Court OVERRULED.

[signature]

JUDGE PRESIDING

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

FILED

M. 4-18 1964

James R. Cooney, Clerk, U. S. Court.

By Carolyn Gist DEPUTY

BARBARA JUNE MUNCY, ET VIR

VS.

GENERAL MOTORS CORPORATION, ET AL

CIVIL ACTION NO. 906

RENEWAL OF MOTION FOR DIRECTED VERDICT

After conclusion of presentation of all the evidence, and after announcement of "rest" by all parties, General Motors Corporation, one of the Defendants in the captioned cause, hereby renews the Motion for New Trial heretofore presented at the conclusion of the presentation of evidence by Plaintiffs, and after announcement of "rest" by Plaintiffs.

Respectfully submitted,

KENLEY, RITTER & BOYLAND

BY _____

O R D E R

The renewed Motion for Directed Verdict is by the Court OVERRULED.

_____

JUDGE PRESIDING

R. O. KENLEY, JR.
OTTO A. RITTER
HERBERT BOYLAND
NEAL A. HAWTHORN
JACK N. PRICE

KENLEY, RITTER & BOYLAND
ATTORNEYS AT LAW
PETROLEUM BUILDING
LONGVIEW, TEXAS

PLAZA 6-8251
MAILING ADDRESS
P. O. BOX 312

Exhibit D, page 1

April 16, 1964

U. S. District Clerk
Eastern District of Texas
U. S. Courthouse Building
Jefferson, Texas

Attention: Miss Carlyn Gist

RE: CIVIL ACTION NO. 906; BARBARA JUNE MERCY, ET VIR VS. GENERAL MOTORS CORPORATION, ET AL; KMAB #3988

Dear Miss Gist:

Enclosed you will find the following instruments: (1) Motion for Directed Verdict; (2) Renewal of Motion for Directed Verdict; (3) Motion for Judgment Non Obstante Veredicto; and (4) Motion for New Trial.

The Motion for Directed Verdict was made by reference to the formal Motion dictated during the first trial of the case. Rather than refer back to the record, and incorporate it as part of the record on appeal, I have chosen to reduce it to writing. There are no points contained in the Motion which were not stated at the time the original Motion was made.

I would appreciate it if you would bring these matters to the attention of the Court and secure his signature on the Motion for Directed Verdict, and ruling upon the Motions for Judgment Non Obstante Veredicto and New Trial.

Thank you for your courtesy.

Very truly yours,

KENLEY, RITTER & BOYLAND

Jack N. Price

JNP:mh
enclosures

COPY

Exhibit D, page 2

U. S. District Clerk
Eastern District of Texas
U.S. Courthouse Building
Jefferson, Texas

Attention: Miss Carlyn Gist

Page 2

cc: Mr. Mark Martin, Fidelity Union Tower, Dallas 1, Texas
Mr. Sam P. Burford, 1511 Fidelity Union Life Bldg., Dallas, Tex.
Mr. Gordon Wellborn, P.O. Drawer 411, Henderson, Texas
Mr. William Harwitz, 1021 First National Bank Bldg.,
Longview, Texas
Mr. Franklin Jones, P. O. Drawer 1249, Marshall, Texas

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION 13

NUMBER & STYLE OF CASE, 906, Muncy vs. General Motors

The following motion was filed on 4-18-64 (date):

Motion for Directed Verdict
Renewal for Motion for Directed Verdict
Motion for Judgment Non Obstante Veredicto
Motion for New Trial

There was (~~was not~~) evidence received of the necessary service of motion on the adverse parties. No motion will be presented to the Judge until indication of service is received by the Clerk and the proper time has elapsed as governed by the Rules of this Court. Indication of service is usually given by a statement at the bottom of the motion, below the signature, showing the date a copy of the motion was mailed to adverse party. This statement should be signed.

As soon as a reply to the motion is filed, or when the 8 days allowed for reply have expired (except in cases where the Federal Rules of Civil Procedure allow more than 8 days,) the motion and all related pleadings will be placed on the motion docket and referred immediately to the Judge by the Clerk's Office. In cases in which the FRPC allow more than 8 days, the motion will be submitted immediately upon expiration of the appropriate time.

THE LOCAL RULE is to consider motions on the pleadings, without oral hearing, unless on showing good cause an oral hearing is granted. Request for oral hearing, if any, should be made when the motion, or the reply, is filed. If oral hearing is granted, the Judge will set a date for same and the interested attorneys will be notified.

THE JUDGE desires that memorandum briefs containing authorities relied on as to matters raised in the motion be filed by the respective parties before the motion is submitted.

Please note also that it is the Judge's rule that all documents, including forms of orders and judgments, be sent to the Clerk's Office and not direct to the Judge.

JAMES R. COONEY, CLERK
Carlynn Gist

cc:
All Attorneys of Record

A TRUE COPY I CERTIFY
JAMES R. COONEY, CLERK
U. S. DISTRICT COURT
EASTERN DISTRICT, TEXAS

Exhibit F, page 1

...RSHALL CIVIL DOCKET

UNITED STATES DISTRICT COURT

Pltf's. Jury demand date: 7-27-62 NO. 906

...S. C. Form No. 106 Rev. FPI—LK—9-27-56—20M—...

TITLE OF CASE	ATTORNEYS
BARBARA JUNE MUNCY AND HUSBAND, CHARLES MUNCY (Fayetteville, Ark.) VS. GENERAL MOTORS CORPORATION, DAVIS SMITH, INDIVIDUALLY AND D/B/A SMITH CHEVROLET COMPANY, MRS. NELLIE HUDNALL AND C. L. LANE AND WIFE, ALICE HUDNALL LANE	For plaintiff: Jones, Brian & Jones P. O. Drawer 1249 Marshall, Texas William Hurwitz 1021 First National Bank Building Longview, Texas For defendants Mrs. Nellie Hudnall, C. L. Lane & wife------- Bamford, Byburn & Ford 1511 Fidelity Union Life Bldg., Dallas, and Gordon Melborn, Houston, ... For Deft. Davis Smith, Ind. & D/B/a-- ...2200 Fidelity Union Tower, Dallas, Tex. For Defts. General Motors ... Corp. ...Fulbright, Crooker, Freeman, Bates & Jaworski, Bank of the Southwest Bldg. Houston 2, Texas

$440,339.85- Personal injury to Barbara June Muncy on 9-15-60, in Kilgore, Texas, at front of Duncan's Variety Store. Supposedly parked car of Mr. & Mrs. C. L. Lane, in which Mrs. Nellie Hudnall was a passenger, plunged onto sidewalk allegedly crushing Barbara June Muncy against plate glass window of Duncan's Variety Store. Her left leg amputated above knee. Right leg mutilated and deformed, as result of accident.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 6 mailed July 1962	Clerk	7-27-62	2106, JBJ	15 00	
	Mars. Lanes-	7-27-62	To Tyler		15 00
	T-$8.30, S-$4.	(C.D. 201	#5)	15 00	15 00
J.S. 6 mailed	Marshal	4-14-64	19996 (Tyler)		
	Hudnall-S-$2.	Registry acct. Home Ind.			
Basis of Action: (7-30-62	Docket Fee $9.10	Co. for Use of Muncys			
Div. Citizenship				5000 00	
	Witness fees	6-15 K.R.B		5 00	Appeal
		6-19 To Tyler		Ck #12	$5 —
Action arose at: Orig.	Depositions	6-22 CA 201 #5			

906

Exhibit F, page 2

DATE	PROCEEDINGS	Date Order or Judgment Noted
7-27-62	Filed Original Complaint of Plaintiff. Summonses issued and handed to Mr. Franklin Jones, Sr. as follows: General Motors Corp., with C.T.Corporation System, Republic National Bank Building, Dallas, Texas, as Agent. Davis Smith, individually and d/b/a Smith Chevrolet Co., Henderson, Rusk Co. Texas C. L. Lane and wife, Alice Hudnall Lane, Overton, Rusk Co., Texas. Mrs. Nellie Hudnall, Overton, Rusk, Co., Texas.	
7-31-62	Filed Marshal's Return- Mrs. Nellie Hudnall served in person at her residence Overton, Texas 7-27-	
7-31-62	Filed Marshal's Return- C.E.Lane served in person at residence, Overton, Texas, on 7-27-62. Mrs.C.L.Lane served at Heiligman Clinic, Overton, Texas, on 7-27-62. - Wm. S. Whiteman, Deputy U.S.Marshal.	
8-4 -62	Filed Marshal's Return- Deft. Davis Smith, Ind. and d/b/a served 7-30-62.	
8-8-62	Filed Original Answer of Mrs. Nellie Hudnall and C. L. Lane & wife with MOTION TO DISMISS.	
8-8-62	Filed Marshal's Return- General Motors served 8-1-62, thru' D. J. Wahl, Dallas.	
8-16-62	Filed Original Answer of Davis Smith, Ind. & d/b/a Smith Chevrolet & MOT. to Di	
8-17-62	Filed Answer of Plaintiffs to Motions to Dismiss now filed or that may be filed. (Above two Motions to Dismiss of Defendants, are MOOT according to Mr. Brian's letter of 8-21-62, and Mr. Burford's letter of 8-24-62.)	
8-23-62	Filed Original Answer of General Motors Corporation and Motion for Change of Venue contained in Par. 4 of Answer.	
8-24-62	Filed Plaintiffs' Motion for More Definite Statement.	
8-30-62	Filed Plaintiffs' Answer to Motion of General Motors Corp. to Transfer Venue to the Tyler Division.	
8-30-62	Filed Memorandum Brief in Support of Plaintiffs' Answer to Motion of General Motors Corporation to Transfer Venue to the Tyler Division.	
9-14-62	Filed Interrogatories by Plaintiffs Pursuant to Rule 33, FRCP to General Motors C	
9-15-62	Filed Request of Defendants, Mrs. Nellie Hudnall & C. L. Lane and wife for Leave to Amend- to include Cross-Action against Gen. Motors & Davis S	
9-19-62	Filed Answer of Davis Smith, Individually & D/B/A, to the Cross-Action of Mrs. Nellie Hudnall and C. L. Lane and wife, Alice Hudnall Lane.	
10-3-62	Filed MOTION of Plaintiffs for Separate Trial of Pleas for Contribution Filed by all Defendants.	
" "	" Brief in Support of Plaintiffs' Motion for Separate Trial of Pleas.	
10-5 -62	Filed ORDER Denying Motion for Change of Venue and Granting Motions for More Definite Statements. JJF V____ P____.	
10-5 -62	" Plaintiffs' Motion for Leave to Amend.	
10-12-62	" ORDER Granting Plaintiffs Leave to Amend, and Amended Original Complaint of Plaintiffs. JJF COB V P____.	
10- 6-62	" Interrogatories by Pltfs. to Davis Smith, Indiv. & d/b/a.(Rule 33)	
10-10-62	Filed Answers of General Motors Corp. to Pltfs'. Interrogatories filed 9-14-62. (Agreed time in which to answer to include 10-10-62.)	
10-11-62	" Supplemental Answer of Deft., Davis Smith, Indiv. and d/b/a/	
10-13-62	" Motion for Order Requiring General Motors to Answer Pltfs'. Interrogatories	
10-13-62	" Motion of Plaintiffs' to Require General Motors to Answer Interrogatories 60(a) and 64(b), and for Discovery.	
10-15-62	" Brief in Support of above two Motions of Plaintiffs.	
10-15-62	" Brief of Davis Smith, Indiv. & d/b/a, in Opposition to the Motion for Separate trials filed by Plaintiffs on 10-3-62.	

DATE	PROCEEDINGS	CLERK'S FEES: PLAINTIFF	CLERK'S FEES: DEFENDANT	AMOUNT REFUNDED OR REMAINING DEPOSITS
10-15-62	Filed ORDER on Plaintiffs' Motion for General Motors Corp. to Answer Interrogatories 60(a) and 64(a) and on Combined Motion to Discover. (15 days from 10-15-62 for General Motors to Answer Interrogatories 60(a) and 64(a) and to have "things" described in Interrogatories in office of Mr. R. O. Kenley, Longview, Texas, at 10 am. 10-30-62.)			
10-15-62	Filed Motion of Mr. & Mrs. C. L. Lane & Mrs. Hudnall for Leave to Amend.			
"	ORDER Granting Leave to Amend. JJF COR V p			
"	Second Amended Original Answer of Mr & Mrs. C. L. Lane & Mrs. Hudnall.			
10-19-62	Filed Answers of Davis Smith & Smith Chevrolet to Plaintiffs' Interrogatori			
10-19-62	Filed Plaintiffs' Motion for Discovery, etc. to all Defendants. Brief to Sup			
10-18-62	Filed Plaintiffs' Request for Admissions, etc. to General Motors Corp.			
10-19-62	Filed Motion of Davis Smith, Indiv. & d/b/a, to Amend and ORDER Granting Davis Smith Leave to Amend. JJF COR V p			
10-19-62	Filed First Amended Original Answer of Davis Smith, Indiv. & d/b/a.			
10-20-62	Filed Notice of Taking Deposition of Miss Lavon Musick by Plaintiffs.			
10-23-62	Filed Plaintiffs' Answer to Motion of General Motors & Davis Smith to not be Compelled to Answer Interrogatories 76 & 77 to General Motors Corp and 27, 28 & 29 to Davis Smith.			
10-23-62	File to Beaumont for action on "Ripe" Motions by Judge Fisher. Set for 11-5-62 ----Cont. for term.			
10-25-62	Filed Plaintiffs' Motion for Leave to Amend(Form for Order & Sec. Amend. Comp			
10-25-62	Filed Motion of Deft., General Motors Corp. for Leave to Amend. (Form of First Amended Answer of Gen. Motrs			
10-26-62	Answer of C. L. Lane & wife and Mrs. Nellie Hudnall to Plaintiffs' Motion for Discovery and Production of Documents, etc.			
10-26-62	Brief in Support of above Answer of C. L. Lane & wife & Mrs. Hudnall.			
10-27-62	Answer of Davis Smith, d/b/a to Plaintiffs' Motion for Discovery, etc.			
10-30-62	Answer of Deft. General Motors Corp. to Plaintiffs' Motion for Discovery and Production of Documents, etc.			
10-31-62	Motion of Deft., Davis Smith, Individually and d/b/a, for Leave to Supplement.			
10-31-62	ORDER Granting Davis Smith Leave to Supplement. JJF COR V p			
10-31-62	Second Supplemental Answer of Davis Smith, Individually & d/b/a.			
11-2- 62	Reply of General Motors for Admission of Facts & Genuineness of Documents.			
11-2 -62	Amended Answers of General Motors Corp. to Plaintiffs' Interrogatories served by letter of 9-13-62 (Filed 9-14-62).			
11-2 -62	Additional Answers, by General Motors Corp. to Interrogatories filed 9-14-62. (Propounded by Plaintiffs & served by letter of 9-13-62.)			
11-4-62	Defendants' First Motion for Continuance (form of order) Not to be contested by plaintiff.			

D. C. 110

DATE	PROCEEDINGS	CLERK'S FEES: PLAINTIFF	CLERK'S FEES: DEFENDANT	AMOUNT REPORTED BY ENCLOSURE RETURNED
11-5 -62	Deposition of Witness Charlie H. Flowers. (Not opened)			
12-7-62	Plaintiffs' Notice to Defendants of Taking Deposition on Written Interrogatories Witness, Miss Lavon Musick, Kilgore, Texas.			
12-7-62	Record of Deposition, and Certificate on Deposition Taken on Written Interrogatories of Miss Lavon Musick.			
2-20-63	Interrogatories by Plaintiffs Pursuant to Rule 33, FRCP, to General Motors Corp.			
2-20-63	Interrogatories by Plaintiffs to Davis Smith, Individually & d/b/a, Pursuant R-33.			
2-20-63	Interrogatories by Plaintiffs, Pursuant to Rule 33, FRCP, to Mrs. Alice Hudnall Lane and Mrs. Nellie Hudnall. (2-25-63- Entire file to Beaumont, request of Rosalie Trahanm for pre-trial.)			
2-28-63	Objections of General Motors Corp. to Interrogatories Propounded by Plaintiffs under Rule 33, FRCP.(Filed in Tyler & Orig. & 1 copy to Beaumont for file there.) (2nd copy to Jefferson.)			
3-1 -63	Objections of Defts. Mrs. Alice Hudnall Lane and Mrs. Nellie Hudnall to Interrogatories by Plaintiffs Pursuant to Rule 33, FRCP, and Motion to Strike Interrogatories.(Filed at Jefferson & Orig. to Bmt for file there.)			
3-1-63	Brief in Support of Objections of Defendants Mrs. Alice Hudnall Lane and Mrs. Nellie Hudnall to Interrogatories and Motion to Strike. (to Bmt for file.) Set for 4-1-63			
3-6 -63	Answers of Deft., Davis Smith, d/b/a, Smith Chevrolet Co., to Interrogatories by Plaintiffs Pursuant to Rule 33, FRCP.			
3-16-63	Plaintiffs' Answer to Objections of General Motors Corp. to Interrogatories Served February 19, 1963, and Alternative Motion to Discover.			
3-16-63	Memorandum Brief in Support of Plaintiffs' Reply to Objections of Defendant, General Motors Corporation to Interrogatories served February 19, 1963.			
3-22-63	Memorandum Brief of Deft., General Motors,to Interrogatories Propounded under Rule. 33.			
4-4-63	Interrogatories by Defendant, Davis Smith Chevrolet Company, Pursuant to R-33,RFCP.			
4-4-63	Motion of Davis Smith, d/b/a Smith Chevrolet Co. to Require Pltfs. to Answer Interrogatories in Less than 15 Days as required by R-33, FRCP.			
4-5-63	Motion of General Motors for Leave to Amend & Order Granting Motion. JP_Y_P_____.			
4-5-63	Second Amended Original Answer of General Motors Corp.			
4-18-63	Answers of Plaintiffs to Interrogatories by Deft. Davis Smith d/b/a Pursuant to R-33			
4-24-63	Plaintiffs' Motion to Strike and Exclude from the Jury Paragraph XIV of the Second Amended Original Answer of Deft. General Motors Corp.			
4-24-63	Brief in Support of Pltfs' Motion to Strike and Exclude from the Jury Par. XIV,etc.			
5-15-63	Interrogatories by Plaintiffs Pursuant to Rule 33, FRCP			
5-22-63	Pltfs. Notice of Taking Deposition on Written Interrogatories of David C. McCraw.			

Exhibit F, page 5

CAUSE NO. 906 RE: BARBARA JUNE MUNCY, ET VIR VS. GEN.MOTORS CORP ET AL.

DATE	PROCEEDINGS
5-24-63	Interrogatories by Plaintiffs Pursuant to Rule 33, FRCP.
5-25-63	Objections of General Motors to Interrogatories Pursuant to Rule 33,FRCP.
5-28-63	Answers of Davis Smith to Interrogatories Propounded by the Plaintiffs.
5-31-63	Answers to Interrogatories Propounded by Plaintiffs.
6-1-63	MOTION of Davis Smith, d/b/a, for Separate Trial of the Liability and Damage Issue.
6-1-63	Motion for Separate Trial of Davis Smith.
6-1-63	Brief in Support of Deft., Davis Smith's, Motion for Separate Trials and this Defendant's Motion for Separate Trial of the Liability and Damage Issues.
6-4-63	Motion for Separate Trial of Defendant General Motors Corporation.
6-4-63	Motion for Separate Trial of the Liability and Damage Issues of Gen.Motors.
6-4-63	Motion of Defendant General Motors Corporation for Leave to Amend.
6-4-63	Objections to Interrogatories Propounded by Plaintiffs Pursuant to Rule 33.
6-7-63	Answers of Deft., General Motors Corp. to Pltfs'. Interrogatories of 5-23-63
6-6-63	Answers of C. L. Lane & wife and Mrs. Nellie Hudnall to Interrogatories Propounded by Plaintiff.
6-12-63	Plaintiffs' Third Amended Original Complaint.
6-15-63	Second Amended Answer of Davis Smith, Individually and d/b/a .
6-18-63	ORDER Granting General Motors Leave to Amend, JJF, COB V 8 p 161.
6-18-63	Third Amended Original Answer of Defendant, General Motors Corporation.
6-18-63	ORDER of June 6, 1963.(After hearing in Beaumont)JJF, COB V 8 p 162.
6-18-63	Answers to Interrogatories Propounded by Plaintiff on May 14, 1963.
6-19-63	Third Supplemental Answer of Davis Smith,Individually, and d/b/aSm.ChevCo.
6-19-63	Filed Written Deposition of E. W. Washington.
6-20-63	General Motors Corporation's Answers to Interrogatories Propounded by Plaintiff, Pursuant to Rule 33.
6-21-63	Motion in Limine of General Motors Corporation.
6-24-63	To Trial
6-27-63	Hung Jury--Mistrial Declared -- Specially Set for Monday 10-28-63- 10A.M
10-4-63	Defendant, General Motors, Amended Answers to Interrogatories served 9-13-63 (Original Answers filed on Oct. 5, 1962) .
D.C.111	6-28-63-Case Specially Set for 10-28-63 10 A.M.

Exhibit F, page 6

CAUSE No. 906 Re: Muncy v. General Motors

DATE	PROCEEDINGS
10-12-63	Filed Pltfs motion to strike amended answer of Gen.Motors of 10-5-63
10-16-63	Filed General Motors reply to motion to strike amended ans. to interrog.
10-28-63	Filed Deft's. Brief in Support of Mo. in Limine
10-28-63	Continued for Trial on April 7, 1964 at 9:30 A.M.
1-14-64	Filed notice of taking deposition of Philip J. Passon of Warren Michigan
2-27-64	Filed Notice of the Taking of Depositions of : Fredrick G. Donner, John F. Gordon, Howard K. Gandelot & Mark Bauer
3-6-64	Filed Defendant's Motion for Protection and Brief
3-9-64	Filed Interrogatories Propounded by Defendant to Plaintiff
3-16-64	Filed Objections to Interrogatories Propounded by General Motors Corporatic March 6, 1964.
3-16-64	Filed Brief Supporting Objections of the Plaintiffs to Interrogatories Propounded by General Motors Corporation March 6, 1964.
3-28-64	Filed Defendant's Motion to Amend Answer
3-28-64	Filed Depositions of Mark H. Bauer, Edwin Dybvig, Robert Daley, Philip Passon and Stuart Meyer
4-3-64	Filed Motion (of Davis Smith) to Request Submission of Special Interrogatori to the Jury And Brief in Support of Motion
4-3-64	Filed Motion in Limine (Davis Smith)
4-3-64	Motion in Limine Regarding Certain Jury Arguments (Davis Smith)
4-6-64	Filed Answers of Philip J. Passon to Interrogatories Propounded by Deft.
4-6-64	Filed Answers of Robert H. Daley to Interrogatories Propounded by Deft.
4-6-64	Filed Supplemental Motion in Limine (Overruled)
4-6-64	Filed Motion in Limine of Davis Smith
4-3-64	Filed Deposition of J. A. Young
4-3-64	Filed Deposition of Ty D. Grigsby
4-8-64	Filed Order Granting Leave to File Fourth Amended Original Answer
* 10-16-63	Filed Order Striking Portions of Amended Answers of Gen. Motors to Interrogatories
4-9-64	Filed Verdict of the Jury Finding for the Plaintiffs and against (1) General Motors Corp. (2) Mrs. Nellie Hudnall (3) C. L. Lane (and wife) Alice Hudnall Lane and assessing damages at $225,000.00. Lester Bush, Foreman
4-10-64	Filed Final Judgment--Pltf. to recover $250,000.00 with 6% int. except from the Deft., Davis Smith, d/b/a Smith Chevrolet Co.--Civ. Or. Bk. 9, p.
4-15-64	Filed Motion to Amend Judgment and Order Granting Motion to Amend Judgment signed by Judge Fisher --Civ. Order Bk. 9, p. 165
4-15-64	Filed Amended Judgment (adding jointly and severally)--Civ. Order Bk. 9, p.
4-7-64	Filed Order Overruling Additional Motion in Limine

Exhibit F, page 7

CAUSE No. 906 : RE: Muncy vs. General Motors Corp.

DATE	PROCEEDINGS
4-14-64	Filed Letter from Burford, Ryburn & Ford with check from Home Indemnity Co. for $5,000.00 to be placed in the registry account for the use and benefit of the Muncys and their attorneys. This represents all of the liability of the Defendants, C. L. Lane, Alice H. Lane and Mrs. Nellie Hudnall
4-18-64	Filed Defendant's Motions: Motion for Directed Verdict; Renewal of Motion for Directed Verdict; Motion for Judgment Non Obstante Veredicto; Motion for New Trial
5-18-64	Filed Order Overruling Motion for Directed Verdict and Renewal of Motion for Directed Verdict--Civ. Or, Bk. Vol. 9, p. 192
5-18-64	Filed Order Order Overruling Motion for Judgment Non Obstante Veredicto Civ. Or. Bk. Vol. 9, p. 193
5-18-64	Filed Order Overruling Motion for New Trial--Civ. Or, Bk. Vol. 9, p. 194
5-25-64	Filed Reporter's Transcript -- two volumes.
6-15-64	Filed Notice of Appeal by Defendant, General Motors (Filing Fee Pd.)
6-15-64	Filed Cost & Supersedeas Bond
6-15-64	~~Filed Designation of Instruments to be Included in Appeal~~
6-15-64	~~Filed Designation of Points of Error to be Relied Upon~~ withdrawn
6-15-64	Filed Bill of Exceptions
6-17-64	Order on Bill of Exceptions--COB Vol 9, p. 210
7-7-74	Filed Bill of Exceptions by Deft., General Motors Corp. and ORDER Approving Bill of Exceptions, Judge Fisher, COB 10, p. 5
4-9-64	Order Overruling Motion of Deft., Smith, to Submit Special Interrogatories to Jury (filed 4-3-64 & 4-9-64)
4-3-64	Order Overruling Motion of Deft., Smith, to Restrict Evidence Concerning Estimates of Damages for pain & Suffering of Plaintiff (filed 4-3-64)
4-3-64	Order Granting Motion in Limine by Deft., Smith, filed 4-3-64
4-6-64	Order Granting Paragraph 1 & 2 on Motion in Limine by Deft., Smith, filed 4-6-64
Order on	Order on Deft., General Motors, Motion in Limine filed 6-21-63
4-9-64	Order Overruling Deft., General Motors, Motion to Request Submission of Special Interrogatories to the Jury
6-29-64	General Motors Motion for Extension of Time to File Appeal
7-7-74	Order Granting Extension of Time to file appeal (through 9-12-64) (Cert. copy sent to Court of Appeals)

D. C. 114

CIVIL DOCKET — Exhibit G, page 1 — Civil No. 906

UNITED STATES DISTRICT COURT

Jury demand date: Plaintiff 7-27-62

FPI ATLANTA—12-19-59—10M—3777

TITLE OF CASE	ATTORNEYS
BARBARA JUNE MUNCY AND HUSBAND, CHARLES MUNCY VS. GENERAL MOTORS CORPORATION, DAVIS SMITH, INDIVIDUALLY AND D/B/A SMITH CHEVROLET COMPANY, MRS. NELLIE HUDNALL AND C. L. LANE AND WIFE, ALICE HUDNALL LANE	For plaintiff: Franklin Jones Sr. P. O. Drawer 1249 Marshall, Texas William Hurwitz 1021 First National Bank Bldg. Longview, Texas For defendant: Burford, Ryburn & Ford (Dallas, Tex.) for Mrs. Nellie Hudnall, C. L. Lane and Alice Hudnall Lane Gordon Wellborn (Henderson, Texas) Strasburger, Price, Kelton, Miller & Martin (Dallas, Texas) for Davis Smith, Indv. & d/b/a Smith Chevrolet Kenley, Ritter & Boyland (Longview, Tex) Fulbright, Crooker, Freeman, Bates & Jaworski (Houston, Tex.) for General Motors Corp.

$50,239.85-Personal injury to Barbara June Muncy on 9-15-60, in Kilgore, Texas. Parked car of Mr. & Mrs. C. L. Lane, in which Mrs. Nellie Hudnall was a passenger, plunged onto sidewalk allegedly crushing Barbara June Muncy against plate glass window of Duncan's Variety Store. Her left leg amputated above knee. Right leg mutilated and deformed as result of accident.

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
J.S. 6 mailed	Clerk Plff.	15	00	7-27	Jones	15	00		
				7-27	To Tyler			15	00
				C. D.	201 #5	15	00	15	00
J.S. 6 mailed	Marshal			4-14-64	#19996 (Tyler) Registry Acct. from Home Indemnity Co.	5000	00		
Basis of Action:	Docket fee								
	Witness fees			6-15-64	Kenley	5	00	Appeal	
Action arose at:	Depositions			6-19	To Tyler			5	00
				6-22	C.D. 201 #55			5	00

DATE	PROCEEDINGS	Date Order or Judgment Noted
7-27-62	Original Complaint, issued summons and handed to Franklin Jones, Sr.	
7-31-62	Filed Marshal's Return: Mrs. Nellie Hudnall served in person, Overton, Texas C. L. Lane and Mrs. C. L. Lane served in person, Overton, Texas— All served 7-27-62	
8-4-62	Filed Marshal's Return: Davis Smith, Indv. & d/b/a Smith Chevrolet served 7-30-62; General Motors served through D. E. Wahl, Dallas on 8-1-62.	
8-8-62	Filed Original Answer of Mrs. Nellie Hudnall, C. L. Lane & Alice Hudall Lane with Motion to Dismiss (8-24-62 MOOT)	
8-16-62	Filed Original Answer of Davis Smith, Indv. and d/b/a Smith Chevrolet with Motion to Dismiss (8-24-62 MOOT)	
8-17-62	Filed Plaintiff's Answer to Motions to Dismiss now filed or that may be filed.	
8-17-62	Filed Motion of Plaintiff to Strike Pleadings to Abate or Stay Proceedings Therein On Account of State Court Proceedings	
8-23-62	Filed Original Answer of General Motors (Motion for Change of Venue)	
8-24-62	Filed Plaintiff's Motion for More Definite Statement	
8-30-62	Filed Plaintiff's Answer to Motion for Change of Venue	
8-30-62	Filed Brief in Support of Answer to Motion for Change of Venue	
9-14-62	Filed Plaintiff's Interrogatories Propounded to General Motors	
9-16-62	Filed Request of Nellie Hudnall and C. L. and Alice Hudnall Lane to Amend (to include Cross-Action against General Motors and Davis Smith)	
9-16-62	Filed Order Granting Nellie Hudnall [illegible] C. L. and Alice Hudnall Lane Leave to Amend	
9-17-62	Filed First Amended Answer of Nel[illegible]nall, C. L. Land & Alice Hudanll Lane	
9-19-62	Filed Answer of Davis Smith, Indv. & as Smith Chevrolet Co. to the Cross Action of Nellie Hudnall, C. L. Lane & Alice Hudnall Lane.	
10-3-62	Filed Plaintiff's Motion for Separate Trial of Pleas for Contribution filed by all Defendants.	
10-3-62	Filed Brief in Support of Motion for Separate Trial of Pleas	
10-5-62	Filed Order Denying Motion for Change of Venue and Granting Motions for More Definite Statements	
10-5-62	Filed Plaintiff's Motion for Leave to Amend	
10-12-62	Filed Order Granting Plaintiffs Leave to Amend	
10-12-62	Filed Plaintiff's Amended Original Complaint	
10-6-62	Filed Plaintiff's Interrogatories Propounded to Davis Smith, Indv. and d/b/a Smith Chevrolet Co.	
10-10-62	Filed Answers of General Motors to Interrogatories Propounded by Plaintiffs (9-13-62)	
10-11-62	Filed Supplemental Answer of Davis Smith, Indv. & d/b/a Davis Chevrolet Company	
10-13-62	Filed Plaintiff's Motion for Order Requiring General Motors to Answer all Interrogatories served 9-13-62.	
10-13-62	Filed Plaintiff's Motion to Require General Motors to Answer Interrogatories Nos. 60(a) and 64(a) and for Discovery	
10-13-62	Filed Brief in Support of Above Two Motions by Plaintiff	
10-15-62	Filed Brief of Davis Smith in Opposition to Motion for Separate Trials (filed by Pltf. on 10-3-62)	
10-15-62	Filed Order Requiring General Motors to Answer Interrogatories (all)	
10-15-62	Filed Order Requiring General Motors to Answer Interrogatories Nos. 60(a) & 64(a) and On Motion for Discovery	

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CAUSE NO. 906 RE: MUNCY VS GENERAL MOTORS, ET AL

DATE	PROCEEDINGS
10-15-62	Filed Motion of C. L. Lane, Alice Hudanll Lane & Mrs. Nellie Hudnall for Leave to Amend
10-15-62	Filed Order Granting Leave to Amend to C. L. Lane, Alice Hudnall Lane and Mrs. Nellie Hudnall
10-15-62	Filed Second Amended Answer of C. L. Lane, Alice Hudnall Lane and Mrs. Nellie Hudnall
10-18-62	Filed Plaintiff's Request for Admissions of Facts & Genuineness of Documents Directed to General Motors
10-19-62	Filed Motion of Davis Smith to Amend & Order Granting Leave to Amend
10-19-62	Filed First Amended Original Answer of Davis Smith, Indv. and d/b/a Davis Smith Chevrolet Company
10-19-62	Filed Answers of Davis to Interrogatories Propounded by Plaintiff
10-19-62	Filed Plaintiff's Motion for Discovery & Production of Documents for Inspection, Copying and Photographing
10-20-62	Filed Plaintiff's Notice of Taking of Deposition of Lavon Musick
10-23-62	Filed Plaintiff's Answer to Motion of General Motors and Davis Smith To Not Be Compelled to Answer and Furnish Statements per Certain Interrogatories
10-25-62	Filed Plaintiff's Motion to Amend and Order Granting Leave to Amend
10-25-62	Filed Second Amended Original Complaint
10-25-62	Filed Motion of General Motors for Leave to Amend and Order Granting Motion--By Substituting Certain Amended Pages in Amended Complaint
10-25-62	Filed First Amended Original Answer of General Motors
10-25-62	Order on Plaintiff's Motion for Discovery
10-26-62	Filed Answer of Defendants, C. L. Lane, Alice Hudnall Lane & Mrs. Nellie Hudnall to Plaintiff's Motion for Discovery
10-27-62	Filed Davis Smith's Answer to Plaintiff's Motion for Discovery
10-30-62	Filed Answer of General Motors to Plaintiff's Motion for Discovery
10-31-62	Filed Motion and Order Granting Leave to Davis Smith to Supplement
10-31-62	Filed Second Supplemental Answer of Davis Smith
11-2-62	Filed Amended Answers of General Motors to Interrogatories Propounded by Plaintiff and served 9-13-62
11-2-62	Filed Additional Answers to Interrogatories by General Motors propounded by Plaintiff and served on 9-13-62
11-5-62	Filed Deposition of Witness Charlie H. Flowers
12-7-62	Filed Plaintiff's Notice of Taking of Deposition of Levon Musick on Written Interrogatories
12-7-62	Filed Deposition of Levon Musick (Exhibit Pltf. # 15)

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CAUSE NO. 906 RE: MUNCY VS GENERAL MOTORS, ET AL

DATE	PROCEEDINGS
2-20-63	Filed Plaintiff's Interrogatories Propounded to General Motors
2-20-63	Filed Plaintiff's Interrogatories Propounded to Alice H. Lane & Mrs. Nellie Hudnall
2-20-63	Filed Plaintiff's Interrogaories Propounded to Davis Smith, Indv. and d/b/s Smith Chevrolet Company
2-28-63	Filed Objections of General Motors to Interrogatories Propounded by Plaintiff (2-20-63)
3-1-63	Filed Objections of Alice H. Lane & Mrs. Nellie Hudnall to Interrogatories Propounded by Plaintiff (2-20-63) and Motion to Strike
3-1-63	Brief in Support of Objections to Interrogatories and Motion to Strike
3-6-63	Answers of Davis Smith to Interrogatories Propounded by Plaintiff (2-20-63)
3-16-63	Filed Plaintiff's Answers to Objections of General Motors to Interrogatories Propounded by Plaintiff (2-20-63) and Motion to Discover & Brief
3-22-63	Filed Memorandum Brief of General Motors on Objections to Interrogatories
4-1-63	Filed Pre-Trial Order--signed by Judge Joe J. Fisher--COB 10-p.14
4-3-63	Filed Plaintiff's Motion and Order Granting Leave to Use Depositions of Charlie H. Flowers and Layon Musick
4-4-63	Filed Interrogatories of Davis Smith to Plaintiffs
4-4-63	Filed Motion to Require Answers to Interrogatories Propounded by Davis Smith to Plaintiffs in Less than Fifteen Days
4-5-63	Filed Motion of General Motors to Amend and Order Granting Motion
4-5-63	Filed Second Amended Original Answer of General Motors
4-18-64	Filed Plaintiff's Answers to Interrogatories by DAvis Smith
4-24-63	Filed Plaintiff's Motion to Strike and Exclude from the Jury Paragraph XIV of the Second Amended Original Answer of General Motors and Brief
4-24-63	Filed Order Sustaining Plaintiff's Motion to Strike Paragraph XIV of the Second Amended Answer of General Motors--JJF--COB 10, p. 15
5-15-63	Filed Plaintiff's Interrogatories Propounded to Defendants, General Motors and Davis Smith
5-22-63	Filed Notice of Plaintiff's Taking of Deposition of David C. McGraw
5-24-63	Filed Plaintiff's Interrogatories Propounded to All Defendants
5-25-63	Filed General Motors Objections to Interrogatories Propounded by Plaintiff (filed 5-24-63)
5-28-63	Filed Davis Smith's Answers to Interrogatories Propounded by Plaintiff (filed 5-24-63)
5-31-63	Filed Davis Smith's Answers to Interrogatories Propounded by Plaintiff (filed 5-15-63)
6-1-63	Filed Motion of Davis Smith for Separate Trial of Lisbility & Damage Issues

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CAUSE NO. 906 Re: MUNCY VS GENERAL MOTORS, ET AL

DATE	PROCEEDINGS
6-1-63	Filed Motion of Davis Smith for Separate Trial and Briefs
6-4-63	Filed Motion of General Motors for Separate Trial
6-4-63	Filed Motion of General Motors for Separate Trial of the Liability and Damage Issues
6-4-63	Filed General Motors Objections to Interrogatories Propounded by Plaintiffs on 5-23-63
6-4-63	Filed Motion of General Motors for Leave to Amend
6-18-63	Filed Order Granting Leave for General Motors to Amend
6-18-64	Filed Third Amended Original Answer of General Motors
6-7-63	Filed Answers of C. L. Lane, Alice Hudnall Lane & Mrs. Nellie Hudnall to Interrogatories Propounded by Plaintiffs on 5-24-63
6-7-63	Filed Answers of General Motors to Interrogatories Propounded by Plaintiffs on 5-23-63
6-12-63	Filed Third Amended Original Complaint of Plaintiffs
6-18-63	Filed Second Amended Answer of Davis Smith, Indv. & Smith Chevrolet Co.
6-18-63	Filed Order of June 6, 1963 (After Oral Hearing in Beaumont) COB 8, p. 16
6-18-63	Filed Answers of General Motors to Interrogatories Propounded by Plaintiff on 5-14-63
6-19-63	Filed Third Supplemental Answer of Davis Smith, Indv. & Smith Chevrolet
6-19-63	Filed Deposition of E. W. Washington
6-19-63	Filed Plaintiffs Motion for Instructions Not to Inquire Into Benefits from a Collateral Source and Order
6-21-63	Filed General Motors Motion in Limine
6-21-63	Filed Order Granting in Part & Overruling in Part Motion of General Motors Motion in Limine (JJF) COB 10, p. 8
6-24-63	Filed Davis Smith, Indv. & Smith Chevrolet's Motion in Limine and Order
6-25-63	Filed Affidavit of David C. McGraw
TO TRIAL	6-24-63 THROUGH 6-27-63 (4 days)
6-27-63	Hung Jury--Mistrial Declared--Case Set For 10-28-63
10-4-63	Filed Amended Answers of General Motors to Interrogatories Propounded by Plaintiffs (served 9-13-62) (Answered 10-5-62)
10-12-63	Filed Plaintiff's Motion to Strike Amended Answers to Interrogatories (Answered on 10-5-63)
10-16-63	Filed General Motors Answer to Motion to Strike Amended Answers to Interrogatories (Motion filed 10-12-63)
10-16-63	Filed Order Striking Portions of Amended Answers of General Motors to Interrogatories (Original Answers filed 10-5-62)
10-28-63	Filed Defendant's Brief in Support of Motion in Limine
10-28-63	CASE CONTINUED FOR TRIAL TO APRIL 7, 1964

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CAUSE NO. 906 RE: MUNCY VS GENERAL MOTORS, ET AL

DATE	PROCEEDINGS
-14-64	Filed Notice of the Taking on the Deposition of Philip J. Passon by General Motors
-16-64	Notice of the Taking of the Deposition of Robert H. Daley by General Motors
-27-64	Filed Notice of the Taking of Depositions of the following: Fredrick G. Donner, John F. Gordon, Howard K. Gandelot & Mark Bauer
-6-64	Filed General Motors Motion for Protection and Brief
-6-64	Filed Order Overruling General Motors Motion for Protection
-9-64	Filed General Motors Interrogatories Propounded to Plaintiff
-16-64	Filed Plaintiff's Objections to Interrogatories Propounded by General Motors on 3-6-64 and Brief
-28-64	Filed Motion of General Motors to Amend
-8-64	Filed Order Granting General Motors Leave to Amend
-8-64	Filed Fourth Amended Original Answer of General Motors
-28-64	Filed Depositions of: Mark H. Bauer, Edwin Dybvig, Robert Daley, Philip Passon and Stuart Meyer
-3-64	Filed Motion of Davis Smith to Request Submission of Special Interrogatori to the Jury---And Brief in Support of Motion
[illegible]	[illegible]
4-3-63	Filed Motion in Limine of Davis Smith, Indv. & d/b/a Smith Chevrolet
4-3-64	Filed Motion [illegible] of Davis Smith (Regarding Certain Jury Arguments)
4-3-64	Filed Order Overruling Motion of Davis Smith to Restrict Evidence
4-3-64	Filed Order Granting in Part Motion in Limine of Davis Smith
4-6-64	Filed Answers of Robert H. Daley to Interrogatories Propounded by General Motors
4-6-64	Filed Answers of Philip J. Passon to Interrogatories Propounded by General Motors
4-6-64	Filed Motion in Limine by Davis Smith, Indv. & d/b/a Smith Chevrolet Co.
4-6-64	Filed Order Granting Motion in Limine by Davis Smith (Judge Fisher) COB Vol. 10, p. 10
4-6-64	Filed Motion in Limine (Supplemental) by General Motors
4-6-64	Filed Order Overruling Additional Motion in Limine by General Motors (Judge Joe J. Fisher) COB Vol 9, p. 166
4-9-64	Filed Motion of Davis Smith To request Submission of Special Interrogatori To The Jury
4-9-64	Filed Requested Special Interrogatories of Davis Smith
4-9-64	Filed Requested Instructions of Davis Smith (3)
4-9-64	Filed Order Overruling Motion of Defendant Smith to Submit Special Interrogatories to the Jury--Judge Fisher--COB Vol. 10, p. 13

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CAUSE NO. 906 RE: MUNCY VS GENERAL MOTORS

DATE	PROCEEDINGS
4-9-64	Filed Motion of General Motors to Request Submission of Special Interrogatories To The Jury
4-9-64	Filed Defendant, General Motors Requested Instructions (6)
4-9-64	Filed Defendant, General Motors, Requested Special Interrogatories (36)
4-9-64	Filed Order Overruling Defendant, General Motors, Request for Submission of Special Interrogatories To The Jury (Judge Fisher) COB 10, p. 7
4-9-64	Filed Renewal of Motion for Directed Verdict
4-9-64	Filed Jury Verdict finding for the Plaintiff and against (1) General Motors (2) Mrs. Nellie Hudnall (3) C. L. Land and wife, Alice Hudnall Lane and Assessing Damages at $225,000.000--Lester Bush, Foreman
4-10-64	Filed Judgment--Plaintiff to recover $250,000.00 with 6% interest except from Defendant, Davis Smith, Indv. & d/b/a Smith Chevrolet Co. Judge Joe J. Fisher--COB Vol. 9, p. 160
4-14-64	Filed Letter from Buford, Ryburn & Ford with check from Home Indemnity Co. for $5,000.00 to be placed in the registry of the Court for the use and benefit of the Muncys and their attorneys. This represents all of the liability of the Defendants, C. L. Lane, Alice Hudnall Lane and Mrs. Nellie Hudnall
4-15-64	Filed Motion of Plaintiffs to Amend Judgment and Order Granting Motion
4-15-64	Filed Amended Judgment--Judge Joe J. Fisher--COB Vol. 9, p. 164
4-18-64	Filed General Motors Motion for Judgment Non Obstante Veredicto
4-18-64	Filed Order Overruling Motion for Judgment Non Obstante Veredicto (Judge Fisher) COB--V. 9, p. 193
4-18-64	Filed Motion of General Motors for Directed Verdict
4-18-64	Filed Order Overruling Motion fot Directed Verdict and Renewal of Motion for Directed Verdict (Judge Fisher)--COB V. 9, p. 192
4-18-64	Filed General Motors Motion for New Trial
4-18-64	Filed Order Overruling Motion for New Trial (Judge Fisher) COB 9, p. 194
6-15-64	Filed Bill of Exceptions and Order Approving filed 6-17-64
6-15-64	Filed Notice of Appeal by General Motors
6-15-64	Filed Cost and Supersedeas Bond--Approved June 22, 1964 by Judge Joe J. Fisher
6-17-64	Filed Request for Transcript of Record On Appeal by General Motors
6-29-64	Filed Motion for Extension of Time to File Record In Court of Appeals
7-7-64	Filed Order Granting Extension of Time to File Appeal Up to and Through September 12, 1964. (Judge Joe J. Fisher) (copy sent to Court of Appeals)
7-7-64	Filed Bill of Exceptions and Order Approving (Judge Joe J. Fisher) COB V. 10, p. 5
7-17-64	Filed Plaintiff's Motion for Order Allowing Withdrawal of Transcript
7-27-64	Filed Order Allowing Withdrawal of Trnascript

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Docket No. 906

8-25-64	Bill of Exception
9-2-64	Filed Order Granting Bill of Exception. Mailed Complete Original Record, Transcript and Exhibits to U. S. Court of Appeals, Fifth Circuit, New Orleans, La.
5-15-67	Received and filed from the U. S. Court of Appeals, Fifth Circuit: Judgment issued as Mandate, "Judgment of District Court is hereby reversed; and that this Cause be, and is hereby remanded to the said District Court with directions, in accordance with the opinion of this Court; It is further Ordered and adjudged that the appellees, Barbara June Muncy and Charles Muncy, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court. Court Costs: Docketing $25.00, Printing $2,832.50, Total $2,857.50." From the Opinion of the Fifth Circuit Court: "We are led to the conclusion that the motion of General Motors for a directed verdict should have been granted. The Judgment of the District Court is reversed and the cause is remanded with directions to enter a judgment for General Motors Corporation".
5-15-67	Received from U. S. Court of Appeals: one box and two packages which contained the following: record on appeal, transcript vols. I-V, box of exhibits and package of exhibits.

Certiorari denied by Supreme Court, Order and Opinion of Fifth Circuit Ct. dated 10-6-66.